

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2023

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 001-35492

ALEXANDER & BALDWIN, INC.

(Exact name of registrant as specified in its charter)

Hawaii

(State or other jurisdiction of
incorporation or organization)

822 Bishop Street

P. O. Box 3440, Honolulu, Hawaii

(Address of principal executive offices)

45-4849780

(I.R.S. Employer
Identification No.)

96801

(Zip Code)

(808) 525-6611

(Registrant's telephone number, including area code)

N/A

(Former name, former address, and former
fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, without par value	ALEX	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (\$232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Number of shares of common stock outstanding as of March 31, 2023: 72,593,773

ALEXANDER & BALDWIN, INC.

FORM 10-Q

For the Quarterly Period Ended March 31, 2023

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PART I. FINANCIAL INFORMATION
ITEM 1. FINANCIAL STATEMENTS
ALEXANDER & BALDWIN, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(amounts in millions; unaudited)

	March 31, 2023	December 31, 2022
ASSETS		
Real estate investments		
Real estate property	\$ 1,600.7	\$ 1,598.9
Accumulated depreciation	(209.3)	(202.3)
Real estate property, net	1,391.4	1,396.6
Real estate developments	59.9	59.9
Investments in real estate joint ventures and partnerships	7.4	7.5
Real estate intangible assets, net	41.8	43.6
Real estate investments, net	1,500.5	1,507.6
Cash and cash equivalents	10.7	33.3
Restricted cash	1.0	1.0
Accounts receivable, net of allowances (credit losses and doubtful accounts) of \$ 2.4 million and \$ 2.5 million as of March 31, 2023, and December 31, 2022, respectively	4.2	6.1
Other property, net	2.3	2.5
Operating lease right-of-use assets	3.0	5.4
Goodwill	8.7	8.7
Other receivables, net of allowances of \$ 3.6 million and \$ 2.7 million as of March 31, 2023, and December 31, 2022, respectively	8.0	6.9
Prepaid expenses and other assets	92.6	89.0
Assets held for sale	125.1	126.8
Total assets	\$ 1,756.1	\$ 1,787.3
LIABILITIES AND EQUITY		
Liabilities:		
Notes payable and other debt	\$ 479.2	\$ 472.2
Accounts payable	4.9	4.5
Operating lease liabilities	2.9	4.9
Accrued pension and post-retirement benefits	10.1	10.1
Deferred revenue	71.9	68.8
Accrued and other liabilities	81.7	102.1
Liabilities associated with assets held for sale	77.8	81.0
Total liabilities	728.5	743.6
Commitments and Contingencies (Note 7)		
Redeemable Noncontrolling Interest	7.6	8.0
Equity:		
Common stock - no par value; authorized, 150.0 million shares; outstanding, 72.6 million and 72.5 million shares at March 31, 2023 and December 31, 2022, respectively	1,807.6	1,808.4
Accumulated other comprehensive income (loss)	(2.2)	1.8
Distributions in excess of accumulated earnings	(785.4)	(774.5)
Total A&B shareholders' equity	1,020.0	1,035.7
Total liabilities and equity	\$ 1,756.1	\$ 1,787.3

See Notes to Condensed Consolidated Financial Statements.

ALEXANDER & BALDWIN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(amounts in millions, except per share data; unaudited)

	Three Months Ended March 31,	
	2023	2022
Operating Revenue:		
Commercial Real Estate	\$ 47.9	\$ 46.3
Land Operations	2.5	12.9
Total operating revenue	50.4	59.2
Operating Costs and Expenses:		
Cost of Commercial Real Estate	25.0	24.0
Cost of Land Operations	3.6	9.2
Selling, general and administrative	8.7	8.8
Total operating costs and expenses	37.3	42.0
Gain (loss) on disposal of non-core assets, net	1.1	—
Operating Income (Loss)	14.2	17.2
Other Income and (Expenses):		
Income (loss) related to joint ventures	0.4	1.4
Pension termination	—	(3.2)
Interest and other income (expense), net (Note 2)	(0.1)	(0.1)
Interest expense	(5.0)	(5.7)
Income (Loss) from Continuing Operations	9.5	9.6
Income (loss) from discontinued operations, net of income taxes	(4.2)	1.4
Net Income (Loss)	5.3	11.0
Loss (income) attributable to discontinued noncontrolling interest	\$ —	\$ (0.5)
Net Income (Loss) Attributable to A&B Shareholders	<u>\$ 5.3</u>	<u>\$ 10.5</u>
Earnings (Loss) Per Share Available to A&B Shareholders:		
Basic Earnings (Loss) Per Share of Common Stock:		
Continuing operations available to A&B shareholders	\$ 0.13	\$ 0.13
Discontinued operations available to A&B shareholders	(0.06)	0.01
Net income (loss) available to A&B shareholders	<u>\$ 0.07</u>	<u>\$ 0.14</u>
Diluted Earnings (Loss) Per Share of Common Stock:		
Continuing operations available to A&B shareholders	\$ 0.13	\$ 0.13
Discontinued operations available to A&B shareholders	(0.06)	0.01
Net income (loss) available to A&B shareholders	<u>\$ 0.07</u>	<u>\$ 0.14</u>
Weighted-Average Number of Shares Outstanding:		
Basic	72.5	72.6
Diluted	72.6	72.8
Amounts Available to A&B Common Shareholders (Note 14):		
Continuing operations available to A&B common shareholders	\$ 9.5	\$ 9.6
Discontinued operations available to A&B common shareholders	(4.2)	0.9
Net income (loss) available to A&B common shareholders	<u>\$ 5.3</u>	<u>\$ 10.5</u>

See Notes to Condensed Consolidated Financial Statements.

ALEXANDER & BALDWIN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(amounts in millions; unaudited)

	Three Months Ended March 31,	
	2023	2022
Net Income (Loss)	\$ 5.3	\$ 11.0
Other Comprehensive Income (Loss), net of tax:		
Cash flow hedges:		
Unrealized interest rate hedging gain (loss)	(3.7)	3.4
Impact of reclassification adjustment to interest expense included in Net Income (Loss)	(0.3)	0.4
Employee benefit plans:		
Amortization of net loss included in net periodic benefit cost	—	0.9
Pension termination	—	3.2
Other comprehensive income (loss), net of tax	(4.0)	7.9
Comprehensive Income (Loss)	1.3	18.9
Comprehensive (income) loss attributable to discontinued noncontrolling interest	—	(0.5)
Comprehensive Income (Loss) Attributable to A&B Shareholders	<u>\$ 1.3</u>	<u>\$ 18.4</u>

See Notes to Condensed Consolidated Financial Statements.

ALEXANDER & BALDWIN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(amounts in millions; unaudited)

	Three Months Ended March 31,	
	2023	2022
Cash Flows from Operating Activities:		
Net income (loss)	\$ 5.3	\$ 11.0
Adjustments to reconcile net income (loss) to net cash provided by (used in) operations:		
Loss (income) from discontinued operations	4.2	(1.4)
Depreciation and amortization	9.2	9.9
Loss (gain) from disposals and asset transactions, net	(1.1)	—
Share-based compensation expense	1.6	1.5
Equity in (income) loss from affiliates, net of operating cash distributions	(0.4)	0.1
Pension termination	—	3.2
Changes in operating assets and liabilities:		
Trade and other receivables	(1.4)	(0.8)
Prepaid expenses, income tax receivable and other assets	(1.2)	(5.7)
Development/other property inventory	(0.1)	3.1
Accrued pension and post-retirement benefits	—	0.8
Accounts payable	0.2	0.3
Accrued and other liabilities	(3.6)	(4.8)
Operating cash flows from continuing operations	12.7	17.2
Operating cash flows from discontinued operations	(7.2)	(9.9)
Net cash provided by (used in) operations	5.5	7.3
Cash Flows from Investing Activities:		
Capital expenditures for property, plant and equipment	(3.0)	(2.2)
Proceeds from disposal of assets	1.6	—
Payments for purchases of investments in affiliates and other investments	(0.1)	(0.1)
Investing cash flows from continuing operations	(1.5)	(2.3)
Investing cash flows from discontinued operations	2.2	(1.6)
Net cash provided by (used in) investing activities	0.7	(3.9)
Cash Flows from Financing Activities:		
Payments of notes payable and other debt and deferred financing costs	(18.0)	(10.2)
Borrowings (payments) on line-of-credit agreement, net	25.0	—
Cash dividends paid	(32.0)	(27.0)
Repurchases of common stock and other payments	(2.4)	(2.2)
Financing cash flows from continuing operations	(27.4)	(39.4)
Financing cash flows from discontinued operations	(0.4)	(0.3)
Net cash provided by (used in) financing activities	(27.8)	(39.7)
Cash, Cash Equivalents, Restricted Cash, and Cash included in Assets Held for Sale		
Net increase (decrease) in cash, cash equivalents, restricted cash, and cash included in assets held for sale	(21.6)	(36.3)
Balance, beginning of period	34.4	71.0
Balance, end of period	\$ 12.8	\$ 34.7

	Three Months Ended March 31,	
	2023	2022
Other Cash Flow Information:		
Interest paid, net of capitalized interest	\$ (4.9)	\$ (4.9)
Income tax (payments)/refunds, net	\$ 0.2	\$ —
Noncash Investing and Financing Activities from continuing operations:		
Increase (decrease) in capital expenditures included in accounts payable and accrued and other liabilities	\$ 0.3	\$ —
Dividends declared but unpaid at end of period	\$ 0.6	\$ —
Increase (decrease) in escrow and other receivables from subsidiary and asset disposals	\$ 0.3	\$ —
Noncash Investing and Financing Activities from discontinued operations:		
Increase (decrease) in capital expenditures included in liabilities associated with assets held for sale	\$ 0.2	\$ 0.1
Distribution to noncontrolling interests included in liabilities associated with assets held for sale	\$ 0.3	\$ —
Reconciliation of cash, cash equivalents, restricted cash, and cash included in assets held for sale:		
Beginning of the period:		
Cash and cash equivalents	\$ 33.3	\$ 65.4
Restricted cash	1.0	1.0
Cash included in assets held for sale	0.1	4.6
Cash, cash equivalents, restricted cash, and cash included in assets held for sale	<u>\$ 34.4</u>	<u>\$ 71.0</u>
End of the period:		
Cash and cash equivalents	\$ 10.7	\$ 32.6
Restricted cash	1.0	1.0
Cash included in assets held for sale	1.1	1.1
Cash, cash equivalents, restricted cash, and cash included in assets held for sale	<u>\$ 12.8</u>	<u>\$ 34.7</u>

See Notes to Condensed Consolidated Financial Statements.

ALEXANDER & BALDWIN, INC.
CONDENSED CONSOLIDATED STATEMENTS OF EQUITY AND
REDEEMABLE NONCONTROLLING INTEREST
For the Three Months Ended March 31, 2023 and 2022
(amounts in millions, except per share data; unaudited)

	Total Equity						Redeemable Non- Controlling Interest
	Common Stock		Accumulated Other Comprehensive Income (Loss)	(Distribution in Excess of Accumulated Earnings) Earnings Surplus	Total		
	Shares	Stated Value					
Balance, January 1, 2022	72.5	\$ 1,810.5	\$ (80.7)	\$ (663.2)	\$ 1,066.6	\$ 6.9	
Net income (loss)	—	—	—	10.5	10.5	0.5	
Other comprehensive income (loss), net of tax	—	—	7.9	—	7.9	—	
Dividend on common stock (\$ 0.19 per share)	—	—	—	(13.9)	(13.9)	—	
Share-based compensation	—	1.5	—	—	1.5	—	
Shares issued (repurchased), net	0.2	(2.4)	—	0.2	(2.2)	—	
Balance, March 31, 2022	72.7	\$ 1,809.6	\$ (72.8)	\$ (666.4)	\$ 1,070.4	\$ 7.4	

	Total Equity						Redeemable Non- Controlling Interest
	Common Stock		Accumulated Other Comprehensive Income (Loss)	(Distribution in Excess of Accumulated Earnings) Earnings Surplus	Total		
	Shares	Stated Value					
Balance, January 1, 2023	72.5	\$ 1,808.4	\$ 1.8	\$ (774.5)	\$ 1,035.7	\$ 8.0	
Net income (loss)	—	—	—	5.3	5.3	—	
Other comprehensive income (loss), net of tax	—	—	(4.0)	—	(4.0)	—	
Dividend on common stock (\$ 0.22 per share)	—	—	—	(16.2)	(16.2)	—	
Distributions to noncontrolling interest	—	—	—	—	—	(0.4)	
Share-based compensation	—	1.6	—	—	1.6	—	
Shares issued (repurchased), net	0.1	(2.4)	—	—	(2.4)	—	
Balance, March 31, 2023	72.6	\$ 1,807.6	\$ (2.2)	\$ (785.4)	\$ 1,020.0	\$ 7.6	

See Notes to Condensed Consolidated Financial Statements

Alexander & Baldwin, Inc.
Notes to Condensed Consolidated Financial Statements
(unaudited)

1. Background and Basis of Presentation

Description of Business: Alexander & Baldwin, Inc. ("A&B" or the "Company") is a fully integrated real estate investment trust ("REIT") headquartered in Honolulu, Hawai'i, whose history in Hawai'i dates back to 1870. Over time, the Company has evolved from a 571-acre sugar plantation on Maui to become one of Hawai'i's premier commercial real estate companies and the owner of the largest grocery-anchored, neighborhood shopping center portfolio in the state. The Company operates in two segments: Commercial Real Estate ("CRE") and Land Operations. As of March 31, 2023, the Company's commercial real estate portfolio resides entirely in Hawai'i and consists of 22 retail centers, 12 industrial assets and four office properties, representing a total of 3.9 million square feet of gross leasable area ("GLA"), as well as 142.0 acres of land under ground leases. Throughout this quarterly report on Form 10-Q, references to "we," "our," "us" and "our Company" refer to Alexander & Baldwin, Inc., together with its consolidated subsidiaries.

Basis of Presentation: The interim condensed consolidated financial statements are unaudited. Because of the nature of the Company's operations, the results for interim periods are not necessarily indicative of results to be expected for the year. While these condensed consolidated financial statements reflect all normal recurring adjustments that are, in the opinion of management, necessary for fair presentation of the results of the interim period, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States of America ("GAAP") for complete financial statements. Therefore, the interim condensed consolidated financial statements should be read in conjunction with the consolidated balance sheets as of December 31, 2022 and 2021, and the related consolidated statements of operations, comprehensive income (loss), cash flows, and equity and redeemable noncontrolling interest for each of the three years ended December 31, 2022, 2021, and 2020, respectively, and the notes thereto included in the Company's Annual Report filed on Form 10-K for the year ended December 31, 2022 ("2022 Form 10-K"), and other subsequent filings with the U.S. Securities and Exchange Commission ("SEC").

Reclassifications: Prior to December 31, 2022, the Company operated and reported on three segments: Commercial Real Estate; Land Operations; and Materials & Construction ("M&C"). During the fourth quarter of 2022, the Company's wholly-owned subsidiary, Grace Pacific LLC ("Grace Pacific") and Company-owned quarry land on Maui ("Maui Quarries") (collectively, the "Grace Disposal Group"), which made up the majority of activity in the Company's former M&C segment, met the criteria for classification as held for sale and discontinued operations. Accordingly, the assets and liabilities associated with the Grace Disposal Group are classified as held for sale in the condensed consolidated balance sheets, its financial results are classified as discontinued operations in the condensed consolidated statements of operations and cash flows for all periods presented, and the Company's former Materials and Construction ("M&C") segment has been eliminated. As a result of this strategic shift, the chief operating decision maker began reviewing all investments in unconsolidated affiliates together within the Land Operations segment. This change resulted in a reorganization to present the income (loss) related to one joint venture, which historically was included in the results of the former M&C segment, to now be included in the results of the Land Operations segment. All comparable information for the historical periods has been retrospectively adjusted to reflect the impact of these changes. Refer to Note 17 – Held for Sale and Discontinued Operations for additional information regarding the Grace Disposal Group, including the assets held for sale, liabilities associated with held for sale and income (loss) from discontinued operations. Unless otherwise noted, disclosures within the remaining notes to these condensed consolidated financial statements relate solely to the Company's continuing operations.

Rounding: Amounts in the condensed consolidated financial statements and notes are rounded to the nearest tenth of a million. Accordingly, a recalculation of some per-share amounts and percentages, if based on the reported data, may result in differences.

2. Significant Accounting Policies

The Company's significant accounting policies are described in Note 2 to the consolidated financial statements included in Item 8 of the Company's 2022 Form 10-K. There have not been any changes to the Company's significant accounting policies as described in the Company's 2022 Form 10-K.

Recently issued accounting pronouncements

In March 2020, the FASB issued Accounting Standards Update ("ASU") No. 2020-04, *Reference Rate Reform*, establishing ASC Topic 848, and amended the standard thereafter through ASU No. 2021-01 and ASU No. 2022-06 (collectively, "ASC 848"). ASC 848 provides optional practical expedients and exceptions related to the impacts of reference rate reform that affect certain debt, leases, derivatives and other contracts if certain criteria are met. The amendments apply only to contracts and hedging relationships that reference LIBOR or another reference rate expected to be discontinued due to reference rate reform. These amendments are effective immediately and may be applied prospectively to contract modifications made and hedging relationships entered into or evaluated on or before December 31, 2024. The Company plans to adopt ASU 2020-04 during the second quarter of 2023 after modifying certain debt to update the reference rate from LIBOR to the Secured Overnight Financing Rate (SOFR). The Company will continue to assess the impact of the guidance and may apply other elections as applicable going forward.

Interest and other income (expense), net

Interest and other income (expense), net for the three months ended March 31, 2023 and 2022, included the following (in millions):

	Three Months Ended March 31,	
	2023	2022
Interest income	\$ 0.1	\$ 0.1
Pension and post-retirement benefit (expense)	(0.2)	(0.2)
Interest and other income (expense), net	\$ (0.1)	\$ (0.1)

3. Investments in Affiliates

The Company's investments in affiliates principally consist of equity investments in limited liability companies in which the Company has the ability to exercise significant influence over the operating and financial policies of these investments. Accordingly, the Company accounts for its investments using the equity method of accounting.

Operating results presented in the Company's condensed consolidated financial statements include the Company's proportionate share of net income (loss) from its equity method investments. Summarized financial information of entities accounted for by the equity method on a combined basis for the three months ended March 31, 2023 and 2022, is as follows (in millions):

	Three Months Ended March 31,	
	2023	2022
Revenues	\$ 37.9	\$ 29.4
Operating costs and expenses	34.4	28.5
Gross Profit (Loss)	\$ 3.5	\$ 0.9
Income (Loss) from Continuing Operations ¹	\$ (1.3)	\$ (2.9)
Net Income (Loss) ¹	\$ (1.3)	\$ 2.3

¹ Includes earnings from equity method investments held by the investee.

During the three months ended March 31, 2023 and 2022, Income (loss) related to joint ventures was \$ 0.4 million and \$ 1.4 million, respectively, and return on investment operating cash distributions was zero and \$ 1.5 million, respectively.

4. Fair Value Measurements

Recurring Fair Value Measurements

The following tables present the fair value of those assets and (liabilities) measured on a recurring basis as of March 31, 2023 and 2022, (in millions):

		Fair Value Measurements at			
		March 31, 2023			
Condensed Consolidated Balance Sheet Location		Total	Quoted Prices in Active Markets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets					
Derivative financial instruments - interest rate swaps	Prepaid expenses and other assets	\$ 4.4	\$ —	\$ 4.4	\$ —
Liabilities					
Derivative financial instruments - interest rate swaps	Accrued and other liabilities	\$ (5.7)	\$ —	\$ (5.7)	\$ —

		Fair Value Measurements at			
		December 31, 2022			
Condensed Consolidated Balance Sheet Location		Total	Quoted Prices in Active Markets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets					
Derivative financial instruments - interest rate swaps	Prepaid expenses and other assets	\$ 5.5	\$ —	\$ 5.5	\$ —
Liabilities					
Derivative financial instruments - interest rate swaps	Accrued and other liabilities	\$ (2.8)	\$ —	\$ (2.8)	\$ —

Derivative Financial Instruments: The Company records its interest rate swaps at fair value. The fair values of the Company's interest rate swaps are classified as Level 2 measurements in the fair value hierarchy and are based on the estimated amounts that the Company would receive or pay to terminate the contracts at the reporting date and are determined using interest rate pricing models and interest rate related observable inputs (refer to Note 6 – Derivative Instruments for fair value information regarding the Company's derivative instruments).

Non-Recurring Fair Value

Certain financial and nonfinancial assets and liabilities are measured at fair value on a nonrecurring basis and are subject to fair value adjustments in certain circumstances, such as when there is evidence of impairment. The Company's process for identifying and recording impairment is discussed in Note 2 to the consolidated financial statements included in Item 8 of the Company's 2022 Form 10-K.

The following table presents the fair value hierarchy and quantitative information about the significant unobservable inputs used to determine the fair value of long-lived assets held and used and assets held for sale, net for which a nonrecurring fair value adjustment was recorded (in millions):

	Fair Value Measurements at					Quantitative Information about	
	December 31, 2022					Level 3 Fair Value Measurements	
	Total	Quoted Prices in Active Markets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Gains (Losses)	Valuation Technique/ Unobservable Inputs	Weighted Average Discount Rate
Assets held for sale, net ^{1,2}	\$ 50.0	\$ —	\$ —	\$ 50.0	\$ (89.8)	Indicative bids	N/A
Long-lived assets ³	—	—	—	—	(5.0)	Discounted cash flows/ Market comparables	16 % N/A
Total	\$ 50.0	\$ —	\$ —	\$ 50.0	\$ (94.8)		

¹ Assets or liabilities are presented in *Assets held for sale* or *Liabilities associated with assets held for sale*, respectively, in the Condensed Consolidated Balance Sheets. Impairment loss is presented in *Income (loss) from discontinued operations, net of income taxes* in the Condensed Consolidated Statements of Operations.

² Assets held for sale of \$ 126.8 million, net of liabilities associated with assets held for sale of \$ 81.0 million, and excluding estimated selling costs of \$ 4.2 million.

³ Included in *Real estate property* in the Condensed Consolidated Balance Sheets. Impairment loss is presented in *Cost of Land Operations* in the Condensed Consolidated Statements of Operations.

Assets Held for Sale, net: As a result of the Grace Disposal Group's classification as held for sale as of December 31, 2022, the Company measured the disposal group at its fair value less costs to sell and recorded an impairment charge of \$ 89.8 million for the year ended December 31, 2022. During the three months ended March 31, 2023, the Company recorded no additional impairment charges related to assets and liabilities held for sale. The fair value of the Grace Disposal Group is classified as a Level 3 measurement in the fair value hierarchy because it is determined using significant unobservable inputs such as management assumptions about expected sales proceeds from third parties.

Impairment of Long-lived Assets Held and Used and Finite-Lived Intangible Assets: During the year ended December 31, 2022, the Company recognized an impairment charge of \$ 5.0 million related to parcels of conservation and agriculture zoned land on Oahu. During the three months ended March 31, 2023, the Company did not recognize any impairments of long-lived assets held and used or finite-lived intangible assets. The Company classifies these fair value measurements as Level 3 in the fair value hierarchy because they involve significant unobservable inputs such as cash flow projections, discount rates, and management assumptions.

Financial Assets and Liabilities not Measured at Fair Value

Financial assets and liabilities that are not measured at fair value on our condensed consolidated balance sheets include cash and cash equivalents, restricted cash, accounts and notes receivable, net and notes payable and other debt. The fair value of the Company's cash and cash equivalents, restricted cash, accounts receivable, net and short-term borrowings approximate their carrying values due to the short-term nature of the instruments, which is classified as Level 1 measurement in the fair value hierarchy.

The fair value of the Company's notes receivable approximated the carrying amount of \$ 1.9 million as of March 31, 2023 and December 31, 2022. The fair value of these notes is estimated using a discounted cash flow analysis in which the Company uses unobservable inputs such as market interest rates determined by the loan-to-value and market capitalization rates related to the underlying collateral at which management believes similar loans would be made, and is classified as a Level 3 measurement in the fair value hierarchy.

At March 31, 2023, the carrying amount of the Company's notes payable and other debt was \$ 479.2 million and the corresponding fair value was \$ 461.4 million. At December 31, 2022, the carrying amount of the Company's notes payable and other debt was \$ 472.2 million and the corresponding fair value was \$ 449.2 million. The fair value of debt is calculated by discounting the future cash flows of the debt at rates based on instruments with similar risk, terms and maturities as compared to the Company's existing debt arrangements, and is classified as a Level 3 measurement in the fair value hierarchy.

5. Notes Payable and Other Debt

As of March 31, 2023 and December 31, 2022, notes payable and other debt consisted of the following (dollars in millions):

	Interest Rate (%)	Maturity Date	Principal Outstanding	
			March 31, 2023	December 31, 2022
Secured:				
Laulani Village	3.93 %	2024	\$ 58.8	\$ 59.0
Pearl Highlands	4.15 %	2024	76.7	77.3
Photovoltaic Financing	(1)	2027	2.5	2.6
Manoa Marketplace	(2)	2029	54.0	54.5
Subtotal			\$ 192.0	\$ 193.4
Unsecured:				
Series A Note	5.53 %	2024	\$ 14.2	\$ 14.2
Series J Note	4.66 %	2025	10.0	10.0
Series B Note	5.55 %	2026	27.0	36.0
Series C Note	5.56 %	2026	11.0	11.0
Series F Note	4.35 %	2026	13.6	15.2
Series H Note	4.04 %	2026	50.0	50.0
Series K Note	4.81 %	2027	34.5	34.5
Series G Note	3.88 %	2027	22.1	28.1
Series L Note	4.89 %	2028	18.0	18.0
Series I Note	4.16 %	2028	25.0	25.0
Term Loan 5	4.30 %	2029	25.0	25.0
Subtotal			\$ 250.4	\$ 267.0
Revolving Credit Facilities:				
A&B Revolver	(3)	2025	37.0	12.0
Total debt (contractual)			\$ 479.4	\$ 472.4
Unamortized debt issuance costs			(0.2)	(0.2)
Total debt (carrying value)			\$ 479.2	\$ 472.2

(1) Financing lease has an interest rate of 4.14 %.

(2) Loan has a stated interest rate of LIBOR plus 1.35 %, but is swapped through maturity to a 3.14 % fixed rate.

(3) Loan has a stated interest rate of LIBOR plus 1.05 % based on a pricing grid. \$ 50.0 million was swapped through June 2022 to a 2.40 % fixed rate.

On March 5, 2021, the Financial Conduct Authority announced a timeline for the phase-out of the London Interbank Offered Rate ("LIBOR"). The Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency subsequently issued a joint statement saying that banks should stop entering into new contracts with LIBOR as soon as possible but at least by December 31, 2021. As of January 1, 2022, LIBOR can only be used for legacy LIBOR obligations entered into prior to December 31, 2021. In addition, the publication of US dollar LIBOR is expected to cease after June 30, 2023. The Secured Overnight Financing Rate ("SOFR") and Bloomberg Short Term Bank Yield Index ("BSBY") have been identified as replacements to LIBOR, with the former being recommended by the Federal Reserve-formed Alternative Reference Rates Committee.

On April 28, 2023, the Company entered into the First Amendment to the Third Amended and Restated Credit Agreement ("A&B Revolver") with Bank of America N.A., as administrative agent, First Hawaiian Bank, KeyBank National Association, Wells Fargo Bank, National Association, and other lenders party thereto, which transitioned the interest rate from LIBOR to a benchmark based on SOFR. All other terms of the agreement remain substantially unchanged.

6. Derivative Instruments

The Company is exposed to interest rate risk related to its variable-rate interest debt. The Company balances its cost of debt and exposure to interest rates primarily through its mix of fixed-rate and variable-rate debt. From time to time, the Company may use interest rate swaps to manage its exposure to interest rate risk.

Cash Flow Hedges of Interest Rate Risk

The Company has three interest rate swap agreements designated as cash flow hedges, whose key terms are as follows (dollars in millions):

Effective Date	Maturity Date	Fixed Interest Rate	Notional Amount at March 31, 2023	Asset (Liability) Fair Value at March 31, 2023	Asset (Liability) Fair Value at December 31, 2022
<i>Interest Rate Swap Agreements</i>					
4/7/2016	8/1/2029	3.14 %	\$ 54.0	\$ 4.4	\$ 5.5
<i>Forward Interest Rate Swap Agreements</i>					
5/1/2024	12/9/2031	4.88 %	\$ 57.0	\$ (2.6)	\$ (1.3)
12/9/2024	12/9/2031	4.83 %	\$ 73.0	\$ (3.1)	\$ (1.5)

The asset related to the interest rate swap as of March 31, 2023 and December 31, 2022, is presented within *Prepaid expenses and other assets* in the condensed consolidated balance sheets. The liability related to the forward interest rate swaps as of March 31, 2023 and December 31, 2022, is presented within *Accrued and other liabilities* in the condensed consolidated balance sheets. The changes in fair value of the cash flow hedges are recorded in *Accumulated other comprehensive income (loss)* and subsequently reclassified into interest expense as interest is incurred on the related variable-rate debt.

The following table represents the pre-tax effect of the derivative instruments in the Company's condensed consolidated statements of comprehensive income (loss) during the three months ended March 31, 2023 and 2022, (in millions):

	Three Months Ended March 31,	
	2023	2022
Derivatives in Designated Cash Flow Hedging Relationships:		
Amount of gain (loss) recognized in OCI on derivatives	\$ (3.7)	\$ 3.4
Impact of reclassification adjustment to interest expense included in Net Income (Loss)	\$ (0.3)	\$ 0.4

As of March 31, 2023, the Company expects to reclassify \$ 1.4 million of net gains (losses) on derivative instruments from accumulated other comprehensive income to earnings during the next 12 months.

7. Commitments and Contingencies

Commitments and other financial arrangements

The Company has various financial commitments and other arrangements including standby letters of credit and bonds that are not recorded as liabilities on the Company's condensed consolidated balance sheet as of March 31, 2023:

- Standby letters of credit issued by the Company's lenders under the Company's revolving credit facility totaled \$ 1.1 million as of March 31, 2023. These letters of credit primarily relate to the Company's workers' compensation plans and if drawn upon, the Company would be obligated to reimburse the issuer.
- Bonds related to the Company's real estate activities totaled \$ 18.6 million as of March 31, 2023, and represent commercial bonds issued by third party sureties (permit, subdivision, license and notary bonds). If drawn upon, the Company would be obligated to reimburse the surety that issued the bond for the amount of the bond, reduced for the work completed to date.
- Bonds related to Grace Pacific totaled \$ 328.4 million as of March 31, 2023, and represent the face value of construction bonds issued by third party sureties (bid, performance and payment bonds). If drawn upon, the Company would be obligated to reimburse the surety that issued the bond for the amount of the bond, reduced for the work completed to date. As of March 31, 2023, the Company's maximum remaining exposure, in the event of defaults on all existing contractual construction obligations, was approximately \$ 130.3 million.

The Company also provides certain bond indemnities and guarantees of indebtedness for unconsolidated affiliates accounted for as equity method investments related to Grace Pacific.

- Bond indemnities are provided for the benefit of the third-party surety in exchange for construction bonds (bid, performance and payment bonds). Under such bond indemnities, the Company and the joint venture partners agree to

indemnify the surety bond issuer from all losses and expenses arising from the failure of the joint venture to complete the specified bonded construction; the Company may be obligated to reimburse the surety that issued the bond for the amount of the bond, reduced for the work completed to date if the joint venture does not perform.

- Guarantees of indebtedness may be provided by the Company for the benefit of financial institutions providing credit to unconsolidated equity method investees. As of March 31, 2023, the Company had no such arrangements with third party lenders related to its unconsolidated equity method investees and no amounts outstanding.

The recorded amounts of the bond indemnities and guarantee of indebtedness were not material individually or in the aggregate. Other than those described above, obligations of the Company's joint ventures do not have recourse to the Company, and the Company's "at-risk" amounts are limited to its investment.

Legal proceedings and other contingencies

Prior to the sale of approximately 41,000 acres of agricultural land on Maui to Mahi Pono Holdings, LLC ("Mahi Pono") in December 2018, the Company, through East Maui Irrigation Company, LLC ("EMI"), also owned approximately 16,000 acres of watershed lands in East Maui and held four water licenses to approximately 30,000 acres owned by the State of Hawai'i in East Maui. The sale to Mahi Pono included the sale of a 50 % interest in EMI (which closed February 1, 2019), and provided for the Company and Mahi Pono, through EMI, to jointly continue the existing process to secure a long-term lease from the State for delivery of irrigation water to Mahi Pono for use in Central Maui.

The last of these water license agreements expired in 1986, and all four agreements were then extended as revocable permits that were renewed annually. In 2001, a request was made to the State Board of Land and Natural Resources (the "BLNR") to replace these revocable permits with a long-term water lease. Pending the completion by the BLNR of a contested case hearing it ordered to be held on the request for the long-term lease, the BLNR has kept the existing permits on a holdover basis. Three parties (Healoha Carmichael; Lezley Jacintho; and Na Moku Aupuni O Ko'olau Hui) filed a lawsuit on April 10, 2015, (the "Initial Lawsuit") alleging that the BLNR has been renewing the revocable permits annually rather than keeping them in holdover status. The lawsuit challenged the BLNR's decision to continue the revocable permits for calendar year 2015 and asked the court to void the revocable permits and to declare that the renewals were illegally issued without preparation of an environmental assessment ("EA"). In December 2015, the BLNR decided to reaffirm its prior decisions to keep the permits in holdover status. This decision by the BLNR was challenged by the three parties. In January 2016, the court ruled in the Initial Lawsuit that the renewals were not subject to the EA requirement, but that the BLNR lacked legal authority to keep the revocable permits in holdover status beyond one year (the "Initial Ruling"). The Initial Ruling was appealed to the Intermediate Court of Appeals ("ICA") of the State of Hawai'i.

In May 2016, while the appeal of the Initial Ruling was pending, the Hawai'i State Legislature passed House Bill 2501, which specified that the BLNR has the legal authority to issue holdover revocable permits for the disposition of water rights for a period not to exceed three years. The governor signed this bill into law as Act 126 in June 2016. Pursuant to Act 126, the annual authorization of the existing holdover permits was sought and granted by the BLNR in December 2016, November 2017 and November 2018 for calendar years 2017, 2018, and 2019. No extension of Act 126 was approved by the Hawai'i State Legislature in 2019.

In June 2019, the ICA vacated the Initial Ruling, effectively reversing the determination that the BLNR lacked authority to keep the revocable permits in holdover status beyond one year (the "ICA Ruling"). The ICA remanded the case back to the trial court to determine whether the holdover status of the permits was both (a) "temporary" and (b) in the best interest of the State, as required by statute. The plaintiffs filed a motion with the ICA for reconsideration of its decision, which was denied on July 5, 2019. On September 30, 2019, the plaintiffs filed a request with the Supreme Court of Hawai'i to review and reverse the ICA Ruling. On November 25, 2019, the Supreme Court of Hawai'i granted the plaintiffs' request to review the ICA Ruling and, on May 5, 2020, oral argument was held.

On October 11, 2019, the BLNR took up the renewal of all the existing water revocable permits in the state, acting under the ICA Ruling, and approved the continuation of the four East Maui water revocable permits for another one-year period through December 31, 2020. On November 13, 2020, the BLNR approved another renewal of such permits through December 31, 2021.

On March 2, 2022, the Supreme Court of Hawai'i vacated the ICA's ruling relating to the BLNR's decision to continue the revocable permits for the calendar year 2015, holding that Hawaii Revised Statutes Chapter 343 (the Hawaii Environmental Policy Act) did apply to the permits. The court remanded the matter back to the Circuit Court to determine if any exceptions would apply and, if not, how HRS Chapter 343 should be applied in light of the steps taken by A&B/EMI toward the long-term water lease. The Supreme Court of Hawai'i also determined that the BLNR had the statutory authority to continue the permits

for more than one year, but required BLNR to make findings of fact and conclusions of law determining that the action would serve the best interests of the State. A&B/EMI will continue to defend against the plaintiffs' claims on remand.

In a separate matter, on December 7, 2018, a contested case request filed by the Sierra Club (contesting the BLNR's November 2018 approval of the 2019 revocable permits) was denied by the BLNR. On January 7, 2019, the Sierra Club filed a lawsuit in the circuit court of the first circuit in Hawai'i against BLNR, A&B and EMI, seeking to invalidate the 2019 and 2020 holdovers of the revocable permits for, among other things, failure to perform an EA. The lawsuit also sought to enjoin A&B/EMI from diverting more than 25 million gallons a day until a permit or lease is properly issued by the BLNR, and for the imposition of certain conditions on the revocable permits by the BLNR. The court seeking to invalidate the revocable permits based on the failure to perform an EA was dismissed by the court, based on the ICA Ruling in the Initial Lawsuit. The Sierra Club's lawsuit was amended to include a challenge to the BLNR's renewal of the revocable permits for calendar year 2020. After a full trial on the merits held beginning in August of 2020, the court ruled, on April 6, 2021, against the Sierra Club on its lawsuit challenging the 2019 and 2020 revocable permits. On February 17, 2022, the Sierra Club filed its notice of appeal challenging the decision on the August 2020 trial. The court separately considered a lawsuit filed by the Sierra Club appealing the BLNR's decision to deny it a contested case hearing on the 2021 revocable permits, which were granted by the BLNR on or about November 13, 2020. In that case, on May 28, 2021, the court issued an interim decision that the Sierra Club's due process rights were violated, ordered the BLNR to hold a contested case hearing on the 2021 permits, and that the permits would be vacated. On July 30, 2021, the court modified its ruling to say that the permits would not be invalidated, but left in place pending the outcome of the contested case hearing. The contested case hearing was held by the BLNR in December 2021 to address the continuation of the revocable permits for both calendar years 2021 and 2022 and BLNR issued a decision on June 30, 2022. On December 27, 2021, while BLNR's decision in the contested case hearing was pending, the court further modified its ruling to allow the permits to remain in place until the earlier of May 1, 2022, the date on which the BLNR renders a substantive decision on the continuation of the permits for calendar year 2022, or further order of the court. On April 26, 2022, the court orally granted an extension of the May 1, 2022 deadline to the earlier of June 15, 2022, or the date on which the BLNR renders a substantive decision on the continuation of the permits for calendar year 2022, or as may be further ordered by the court. On June 1, 2022, the court granted an extension of the June 15, 2022 deadline to the earlier of July 15, 2022 or the date on which the BLNR renders a substantive decision on the continuation of the permits for calendar year 2022 or as may be further ordered by the court. On June 30, 2022, the BLNR issued its final decision on the contested case hearing on the permits for calendar years 2021 and 2022, approving the continuation of the permits through the end of calendar year 2022. The Sierra Club filed a notice of appeal of that decision to the Circuit Court of the First Circuit in Hawai'i and on March 31, 2023, the Circuit Court entered its Order on Appeal dismissing the Sierra Club's appeal as moot. The Company and the BLNR also appealed the court's determination that the Sierra Club was entitled to a contested case hearing on the 2021 revocable permits.

On November 10, 2022, the BLNR voted to continue the revocable permits for calendar year 2023 and, at that same meeting, denied the Sierra Club's oral request for a contested case hearing. The Sierra Club subsequently submitted a written request to the BLNR for a contested case hearing on the continuation of the revocable permits, which the BLNR denied on December 9, 2022. On November 29, 2022, the Sierra Club filed an appeal of BLNR's decisions to deny its oral request for a contested case hearing and to continue the revocable permits for 2023 and on December 15, 2022, the Sierra Club amended its appeal to also challenge the BLNR's denial of its written request for a contested case hearing. The BLNR's decision to continue the permits through the end of calendar year 2023 will stand unless overturned on appeal or the Sierra Club obtains a preliminary injunction to prevent the decision from remaining in place.

In connection with A&B's obligation to continue the existing process to secure a long-term water lease from the State, A&B and EMI will defend against the remaining claims made by the Sierra Club.

In addition to the litigation described above, the Company is a party to, or may be contingently liable in connection with, other legal actions arising in the normal conduct of its businesses. While the outcomes of such litigation and claims cannot be predicted with certainty, in the opinion of management after consultation with counsel, the reasonably possible losses would not have a material effect on the Company's consolidated financial statements as a whole.

Further note that certain of the Company's properties and assets may become the subject of other types of claims and assessments at various times (e.g., environmental matters based on normal operations of such assets). Depending on the facts and circumstances surrounding such potential claims and assessments, the Company records an accrual if it is deemed probable that a liability has been incurred and the amount of loss can be reasonably estimated/valued as of the date of the financial statements.

8. Revenue and Contract Balances

The Company generates revenue through its Commercial Real Estate and Land Operations segments. Through its Commercial Real Estate segment, the Company owns and operates a portfolio of commercial real estate properties and generates income (i.e., revenue) as a lessor through leases of such assets. Refer to Note 9 – Leases - The Company as a Lessor for further discussion of lessor income recognition. The Land Operations segment generates revenue from contracts with customers. The Company further disaggregates revenue from contracts with customers by revenue type when appropriate if the Company believes disaggregation best depicts how the nature, amount, timing, and uncertainty of the Company's revenue and cash flows are affected by economic factors. Revenue by type for the three months ended March 31, 2023 and 2022, was as follows (in millions):

	Three Months Ended March 31,	
	2023	2022
Revenues:		
Commercial Real Estate	\$ 47.9	\$ 46.3
Land Operations:		
Development sales revenue	—	6.3
Unimproved/other property sales revenue	0.9	1.8
Other operating revenue	1.6	4.8
Land Operations	2.5	12.9
Total revenues	\$ 50.4	\$ 59.2

The following table provides information about receivables, contract assets and contract liabilities from contracts with customers (in millions):

	March 31, 2023	December 31, 2022
Accounts receivable	\$ 6.6	\$ 8.6
Allowances (credit losses and doubtful accounts)	(2.4)	(2.5)
Accounts receivable, net of allowance for credit losses and allowance for doubtful accounts	\$ 4.2	\$ 6.1
Variable consideration ¹	\$ 62.0	\$ 62.0
Prepaid rent	7.4	4.4
Other deferred revenue	2.5	2.4
Deferred revenue	\$ 71.9	\$ 68.8

¹ Variable consideration deferred as of the end of the periods related to amounts received in the sale of agricultural land on Maui in 2018 that, under revenue recognition guidance, could not be included in the transaction price.

For the three months ended March 31, 2023, the Company did not recognize any revenue related to the Company's variable consideration and other deferred revenue reported as of December 31, 2022.

9. Leases - The Company as a Lessor

The Company leases real estate property to tenants under operating leases. Such activity is primarily composed of operating leases within its CRE segment.

The historical cost of, and accumulated depreciation on, leased property as of March 31, 2023, and December 31, 2022, were as follows (in millions):

	March 31, 2023	December 31, 2022
Leased property - real estate	\$ 1,573.5	\$ 1,572.0
Less: accumulated depreciation	(208.9)	(201.8)
Property under operating leases - net	\$ 1,364.6	\$ 1,370.2

Total rental income (i.e., revenue) under these operating leases during the three months ended March 31, 2023 and 2022, relating to lease payments and variable lease payments were as follows (in millions):

	Three Months Ended March 31,	
	2023	2022
Lease payments	\$ 33.1	\$ 32.2
Variable lease payments	15.6	14.9
Revenues deemed uncollectible, net	(0.7)	0.3
Total rental income	\$ 48.0	\$ 47.4

Contractual future lease payments to be received on non-cancelable operating leases as of March 31, 2023, were as follows (in millions):

	March 31, 2023
2023	\$ 94.3
2024	116.9
2025	100.1
2026	86.8
2027	75.7
2028	63.4
Thereafter	497.5
Total future lease payments to be received	\$ 1,034.7

10. Leases - The Company as a Lessee

There have been no material changes from the Company's leasing activities as a lessee described in Note 13 to the consolidated financial statements included in Item 8 of the Company's 2022 Form 10-K. The following table provides information about the Company's operating lease costs recognized during the three months ended March 31, 2023 and 2022, (in millions):

	Three Months Ended March 31,	
	2023	2022
Operating lease cost	\$ 0.6	\$ 0.6

11. Share-based Payment Awards

The 2022 Incentive Compensation Plan ("2022 Plan") allows for the granting of stock options, stock appreciation rights, stock awards, restricted stock units, dividend equivalent rights, and other awards. The shares of common stock authorized to be issued under the 2022 Plan are to be drawn from the shares of the Company's authorized but unissued common stock or from shares of its common stock that the Company acquired, including shares purchased on the open market or private transactions.

During the three months ended March 31, 2023, the Company granted approximately 310,200 of restricted stock unit awards with a weighted average grant date fair value of \$ 22.36 . During the three months ended March 31, 2022, the Company granted approximately 266,300 of restricted stock unit awards with a weighted average grant date fair value of \$ 25.99 .

The fair value of the Company's time-based awards is determined using the Company's stock price on the date of grant. The fair value of the Company's market-based awards is estimated using the Company's stock price on the date of grant and the probability of vesting using a Monte Carlo simulation with the following weighted-average assumptions:

	2023 Grants	2022 Grants
Volatility of A&B common stock	49.1 %	47.7 %
Average volatility of peer companies	48.2 %	49.5 %
Risk-free interest rate	3.8 %	1.4 %

The Company recognizes compensation cost net of actual forfeitures of time-based or market-based awards. A summary of compensation cost related to share-based payments is as follows (in millions):

	Three Months Ended March 31,	
	2023	2022
Share-based expense:		
Time-based and market-based restricted stock units	\$ 1.6	\$ 1.5

12. Employee Benefit Plans

During 2022, the Company completed the termination of its funded single-employer defined benefit pension plans that covered certain non-bargaining unit employees and bargaining unit employees of the Company and transferred the life insurance benefits for retirees as of June 30, 2022, to an insurance company. The Company continues to maintain its plans that provide retiree health care and the remaining life insurance benefits to certain salaried and hourly employees.

Components of the net periodic benefit cost for the Company's pension and post-retirement plans for the three months ended March 31, 2023 and 2022, are shown below (in millions):

	Three Months Ended March 31,	
	2023	2022
Service cost	\$ —	\$ 0.7
Interest cost	0.1	0.5
Expected return on plan assets	—	(1.2)
Amortization of net loss	—	0.9
Pension termination	—	3.2
Net periodic benefit cost	\$ 0.1	\$ 4.1

13. Income Taxes

The Company has been organized and operates in a manner that enables it to qualify, and believes it will continue to qualify, as a REIT for federal income tax purposes. The Company's effective tax rate for the three months ended March 31, 2023, approximated the effective tax rate for the same period in 2022.

As of March 31, 2023, tax years 2019 and later are open to audit by the tax authorities. The Company believes the result of any potential audits will not have a material adverse effect on its results of operations, financial condition, or liquidity.

14. Earnings Per Share ("EPS")

Basic earnings per common share excludes dilution and is calculated by dividing net earnings allocated to common shares by the weighted-average number of common shares outstanding for the period. Diluted earnings per common share is calculated by dividing net earnings allocated to common shares by the weighted-average number of common shares outstanding for the period, as adjusted for the potential dilutive effect of non-participating share-based awards as well as adjusted by the number of additional shares, if any, that would have been outstanding had the potentially dilutive common shares been issued.

The following table provides a reconciliation of income (loss) from continuing operations to net income (loss) from continuing operations available to A&B common shareholders and net income (loss) available to A&B common shareholders (in millions):

	Three Months Ended March 31,	
	2023	2022
Income (loss) from continuing operations	\$ 9.5	\$ 9.6
Distributions and allocations to participating securities	—	—
Income (loss) from continuing operations available to A&B shareholders	9.5	9.6
Income (loss) from discontinued operations	(4.2)	1.4
Exclude: Loss (income) attributable to discontinued noncontrolling interest	—	(0.5)
Net income (loss) available to A&B common shareholders	\$ 5.3	\$ 10.5

The number of shares used to compute basic and diluted earnings per share is as follows (in millions):

	Three Months Ended March 31,	
	2023	2022
Denominator for basic EPS - weighted average shares outstanding	72.5	72.6
Effect of dilutive securities:		
Restricted stock unit awards	0.1	0.2
Denominator for diluted EPS - weighted average shares outstanding	72.6	72.8

The number of anti-dilutive securities, excluded from the calculation of diluted earnings per common share, consisted of the following (in millions):

	Three Months Ended March 31,	
	2023	2022
Number of anti-dilutive securities	—	0.1

15. Accumulated Other Comprehensive Income (Loss)

For the three months ended March 31, 2023, other comprehensive income (loss) principally includes unrealized interest rate hedging gains and losses and associated reclassification adjustments to interest expense. The components of Accumulated other comprehensive loss, net of taxes, were as follows as of March 31, 2023 and December 31, 2022, (in millions):

	March 31, 2023	December 31, 2022
Employee benefit plans:		
Post-retirement plans	\$ (0.3)	\$ (0.3)
Total employee benefit plans	(0.3)	(0.3)
Interest rate swap	(1.9)	2.1
Accumulated other comprehensive income (loss)	<u>\$ (2.2)</u>	<u>\$ 1.8</u>

The changes in Accumulated other comprehensive income (loss) by component for the three months ended March 31, 2023, were as follows (in millions, net of taxes):

	Employee Benefit Plans	Interest Rate Swap	Total
Balance, January 1, 2023	\$ (0.3)	\$ 2.1	\$ 1.8
Other comprehensive income (loss) before reclassifications, net of taxes of \$ 0	—	(3.7)	(3.7)
Amounts reclassified from accumulated other comprehensive income (loss) ¹	—	(0.3)	(0.3)
Other comprehensive income (loss), net of taxes	—	(4.0)	(4.0)
Balance, March 31, 2023	<u>\$ (0.3)</u>	<u>\$ (1.9)</u>	<u>\$ (2.2)</u>

¹ Amounts reclassified from Accumulated other comprehensive income related to interest rate swap settlements are presented as an adjustment to *Interest expense* in the Condensed Consolidated Statements of Operations. Amounts reclassified from Accumulated other comprehensive income related to employee benefit plan items are presented as part of *Interest and other income (expense), net* in the Condensed Consolidated Statements of Operations.

16. Segment Results

Operating segments are components of an enterprise that engage in business activities from which it may earn revenues and incur expenses, whose operating results are regularly reviewed by the chief operating decision maker (its Chief Executive Officer) to make decisions about resources to be allocated to the segment and assess its performance, and for which discrete financial information is available. The Company operates and reports on two segments: Commercial Real Estate and Land Operations.

Reportable segment information for the three months ended March 31, 2023 and 2022, is summarized below (in millions):

	Three Months Ended March 31,	
	2023	2022
Operating Revenue:		
Commercial Real Estate	\$ 47.9	\$ 46.3
Land Operations	2.5	12.9
Total operating revenue	50.4	59.2
Operating Profit (Loss):		
Commercial Real Estate ¹	20.9	20.7
Land Operations ^{2,3}	(0.1)	1.7
Total operating profit (loss) ²	20.8	22.4
Interest expense	(5.0)	(5.7)
Corporate and other expense ⁴	(6.3)	(7.1)
Income (Loss) from Continuing Operations Before Income Taxes	\$ 9.5	\$ 9.6

¹ Commercial Real Estate segment operating profit (loss) includes intersegment operating revenue, primarily from the Land Operations segment that is eliminated in consolidation.

² In December 2022, the Grace Disposal Group met the classification as held for sale and discontinued operations, and the Company changed the composition of its reportable segments based on how the chief operating decision maker assesses the performance of the Company's continuing operations. This caused reported amounts (i.e., operating profit and segment operating profit) in the historical period to be reclassified from the former M&C segment to the Land Operations segment or discontinued operations. All comparable information for the historical periods has been retrospectively adjusted to reflect the impact of these changes, resulting in changes to Land Operations Operating Profit (Loss) and Total operating profit (loss) of \$ 1.8 million and \$(1.3) million, respectively, for the three months ended March 31, 2022.

³ For the three months ended March 31, 2022, Land Operations segment operating profit (loss) includes equity in earnings (losses) from the Company's various joint ventures of \$ 1.4 million, and pension termination charges of \$ 2.3 million related to the 2022 termination of the defined benefit plans. For the three months ended March 31, 2023, Land Operations segment operating profit (loss) includes \$ 0.4 million of equity in earnings (losses) from the Company's various joint ventures, as well as a gain on sale of non-core assets, net, of \$ 1.1 million, related to the sale of the Company's legacy trucking business.

⁴ Corporate and other expense includes pension termination charges of \$ 0.9 million for the three months ended March 31, 2022, related to the 2022 termination of the defined benefit plans.

17. Held for Sale and Discontinued Operations

Assets and liabilities associated with the Grace Disposal Group are presented in the Condensed Consolidated Balance Sheets as *Assets held for sale* and *Liabilities associated with assets held for sale*, respectively, and the results of operations are presented as discontinued operations in the Condensed Consolidated Statements of Operations and Cash Flows. While the ultimate outcome of the plan to dispose of the Grace Disposal Group is neither certain nor guaranteed, the Company intends to conduct the respective businesses in the ordinary course in substantially the same manner in which it previously has been conducted until a sale occurs.

The following table summarizes income (loss) from discontinued operations included in the Condensed Consolidated Statements of Operations for the three months ended March 31, 2023 and 2022, (in millions):

	Three Months Ended March 31,	
	2023	2022
Revenue	\$ 36.8	\$ 39.2
Cost of sales ¹	(37.4)	(34.3)
Selling, general and administrative	(3.6)	(3.7)
Operating income (loss) from discontinued operations ²	(4.2)	1.2
Income (loss) related to joint ventures	(0.1)	0.1
Interest and other income (expense), net	0.3	0.1
Interest expense	(0.2)	—
Income (loss) from discontinued operations before income taxes ³	(4.2)	1.4
Income tax benefit (expense) attributable to discontinued operations	—	—
Income (loss) from discontinued operations ³	(4.2)	1.4
Loss (income) attributable to discontinued noncontrolling interest	—	(0.5)
Income (loss) from discontinued operations attributable to A&B Shareholders ³	\$ (4.2)	\$ 0.9

¹Includes \$ 0.1 million and zero in costs associated with the resolution of liabilities from the Company's former sugar operations for the three months ended March 31, 2023 and 2022, respectively.

The assets and liabilities held for sale included in the Condensed Consolidated Balance Sheets as of March 31, 2023 and 2022, were as follows (in millions):

	March 31, 2023	December 31, 2022
Cash and cash equivalents	\$ 1.1	\$ 0.1
Accounts receivable and retention, net of allowance for credit losses and allowance for doubtful accounts of \$ 0.4 million and \$ 0.4 million as of March 31, 2023 and December 31, 2022, respectively	30.5	30.8
Inventories	40.1	45.0
Other property, net	67.9	67.4
Operating lease right-of-use assets	30.7	31.3
Prepaid expenses and other assets	44.6	42.0
Less: Impairment recognized on classification as held for sale	(89.8)	(89.8)
Total Assets held for sale	\$ 125.1	\$ 126.8
Notes payable and other debt	\$ 13.7	\$ 14.1
Accounts payable	11.5	10.2
Operating lease liabilities	30.7	31.3
Accrued and other liabilities	21.9	25.4
Total Liabilities associated with assets held for sale	\$ 77.8	\$ 81.0

During the three months ended March 31, 2023, the Company recorded no additional impairment charges related to assets and liabilities held for sale.

Related Party Transactions within Discontinued Operations and Held for Sale: The Company enters into contracts in the ordinary course of business, as a supplier, with affiliate entities that require accounting under the equity method due to the Company's financial interests in such entities and also with affiliate parties that are members in entities in which the Company also is a member and holds a controlling financial interest. Related to the periods during which such relationships existed, revenues earned from transactions with such affiliates were \$ 3.9 million and \$ 2.1 million for the three months ended March 31, 2023 and 2022, respectively. Expenses recognized from transactions with such affiliates were \$ 1.4 million for the three months ended March 31, 2023 and 2022. Receivables from these affiliates were \$ 4.6 million and \$ 6.9 million as of March 31, 2023 and December 31, 2022, respectively. Amounts due to these affiliates were \$ 0.7 million and \$ 0.4 million as of March 31, 2023 and December 31, 2022, respectively.

18. Subsequent Events

On April 25, 2023, the Company's Board of Directors declared a cash dividend of \$ 0.22 per share on outstanding common stock, payable on July 5, 2023, to shareholders of record as of the close of business on June 16, 2023.

On May 3, 2023, the Company completed the acquisition of an industrial property on Oahu for approximately \$ 9.5 million. A portion of the transaction was structured to qualify as a reverse like-kind exchange under Section 1031 of the Internal Revenue Code. The Company has not completed its initial purchase price allocations.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following analysis of the consolidated financial condition and results of operations of Alexander & Baldwin, Inc. ("A&B" or the "Company") and its subsidiaries should be read in conjunction with the condensed consolidated financial statements and related notes thereto included in Item 1 of this Form 10-Q and the Company's Annual Report on Form 10-K for the year ended December 31, 2022, ("2022 Form 10-K") filed with the U.S. Securities and Exchange Commission ("SEC").

Throughout this quarterly report on Form 10-Q, references to "we," "our," "us" and "our Company" refer to Alexander & Baldwin, Inc., together with its consolidated subsidiaries.

Forward-Looking Statements

Statements in this Form 10-Q that are not historical facts are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and involve a number of risks and uncertainties that could cause actual results to differ materially from those contemplated by the relevant forward-looking statements. These forward-looking statements include, but are not limited to, statements regarding possible or assumed future results of operations, business strategies, growth opportunities and competitive positions. Such forward-looking statements speak only as of the date the statements were made and are not guarantees of future performance. Forward-looking statements are subject to a number of risks, uncertainties, assumptions and other factors that could cause actual results and the timing of certain events to differ materially from those expressed in or implied by the forward-looking statements. These factors include, but are not limited to, prevailing market conditions and other factors related to the Company's REIT status and the Company's business, the evaluation of alternatives by the Company related to its non-core assets and business, and the risk factors discussed in the Company's most recent Form 10-K, Form 10-Q and other filings with the SEC. The information in this Form 10-Q should be evaluated in light of these important risk factors. We do not undertake any obligation to update the Company's forward-looking statements.

Introduction and Objective

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") provides additional material information about the Company's business, recent developments and financial condition; its results of operations at a consolidated and segment level; its liquidity and capital resources including an evaluation of the amounts and certainty of cash flows from operations and from outside sources; and how certain accounting principles, policies and estimates affect its financial statements. MD&A is organized as follows:

- *Business Overview:* This section provides a general description of the Company's business, as well as recent developments that management believes are important in understanding its results of operations and financial condition or in understanding anticipated future trends.
- *Consolidated Results of Operations:* This section provides an analysis of the Company's consolidated results of operations for the three months ended March 31, 2023, as compared to the corresponding period of the preceding fiscal year.
- *Analysis of Operating Revenue and Profit by Segment:* This section provides an analysis of the Company's results of operations by business segment for the three months ended March 31, 2023, as compared to the corresponding period of the preceding fiscal year.
- *Use of Non-GAAP Financial Measures:* This section provides a discussion of the Company's non-GAAP financial measures included in this report and presents quantitative reconciliations between the non-GAAP financial measures and the most directly comparable financial measures calculated and presented in accordance with U.S. GAAP. It also describes why the Company believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the Company's financial condition and results of operations and, to the extent material, describes additional purposes for which the Company uses the non-GAAP financial measures.
- *Liquidity and Capital Resources:* This section provides a discussion of any material changes in the Company's liquidity, financial condition and cash flows, including a discussion of any material changes in the Company's ability to fund its future commitments and ongoing operating activities in the short-term (i.e., over the next twelve months from the most recent fiscal period end) and in the long-term (i.e., beyond the next twelve months) through internal and external sources of capital, as compared to the end of preceding fiscal year ended December 31, 2022. It includes an evaluation of the amounts and certainty of cash flows from operations and from outside sources.

- *Other Matters:* This section identifies and summarizes other matters to be discussed in Item 2 of this report including any changes in the significant judgments or critical accounting estimates on the part of management in preparing the Company's consolidated financial statements that may materially impact the Company's reported results of operations and financial condition from the end of the preceding fiscal year ended December 31, 2022, the potential impact of recently issued accounting pronouncements and other miscellaneous matters as needed.

Amounts in the MD&A are rounded to the nearest tenth of a million. Accordingly, a recalculation of totals and percentages, if based on the reported data, may be slightly different.

Business Overview

Reportable segments

The Company operates two segments: Commercial Real Estate and Land Operations. A description of each of the Company's reporting segments is as follows:

- **Commercial Real Estate ("CRE")** - This segment functions as a vertically integrated real estate investment company with core competencies in investments and acquisitions (i.e., identifying opportunities and acquiring properties); construction and development (i.e., designing and ground-up development of new properties or repositioning and redevelopment of existing properties); and in-house leasing and property management (i.e., executing new and renegotiating renewal lease arrangements, managing its properties' day-to-day operations and maintaining positive tenant relationships). The Company's preferred asset classes include improved properties in retail and industrial spaces and also urban ground leases. Its focus within improved retail properties, in particular, is on grocery-anchored neighborhood shopping centers that meet the daily needs of Hawai'i communities. Through its core competencies and with its experience and relationships in Hawai'i, the Company seeks to create special places that enhance the lives of Hawai'i residents and to provide venues and opportunities that enable its tenants to thrive. Income from this segment is principally generated by owning, operating and leasing real estate assets.
- **Land Operations** - This segment includes the Company's legacy landholdings, assets, and liabilities that are subject to the Company's simplification and monetization effort. Financial results from this segment are principally derived from real estate development and land sales, joint ventures, and other legacy business activities.

Simplification strategy

As a REIT focused on Hawai'i commercial real estate, the Company has pursued the monetization and disposition of legacy, non-core assets and landholdings in order to simplify its business and allocate its capital resources to commercial real estate.

In December 2022, in connection with the evaluation of strategic alternatives to monetize and dispose of Grace Pacific and the Maui Quarries (collectively, the "Grace Disposal Group"), the Company's Board of Directors authorized Management to complete a sale of the Grace Disposal Group. In conjunction with the Board's authorization, the Company concluded that the Grace Disposal Group met the criteria for classification as held for sale and discontinued operations as of December 31, 2022. The assets and liabilities associated with the Grace Disposal Group are classified as held for sale in the condensed consolidated balance sheets, and its financial results are classified as discontinued operations in the condensed consolidated statements of operations and cash flows for all periods presented and the Company's former Materials and Construction ("M&C") segment has been eliminated. In conjunction with the elimination of the M&C segment, the Company's equity interest in an unconsolidated materials company was incorporated with the Land Operations reportable segment.

The outcome of the sale of the Grace Disposal Group is not certain, as any transaction would be dependent upon various external factors beyond the Company's control, including, among others, market conditions, industry trends, interest of third parties, and the availability of financing to potential buyer(s) on reasonable terms. Further, there can be no assurance that any potential transaction will result in the Company being able to recover the carrying value of the Grace Disposal Group.

Consolidated Results of Operations

The following analysis of the consolidated financial condition and results of operations of the Company and its subsidiaries should be read in conjunction with the condensed consolidated financial statements and related notes thereto.

Financial results - First quarter of 2023 compared with 2022

(amounts in millions, except percentage data and per share data; unaudited)	Three Months Ended March 31,		2023 vs 2022	
	2023	2022	\$	%
Operating revenue	\$ 50.4	\$ 59.2	\$ (8.8)	(14.9)%
Cost of operations	(28.6)	(33.2)	4.6	(13.9)%
Selling, general and administrative	(8.7)	(8.8)	0.1	(1.1)%
Gain (loss) on disposal of non-core assets, net	1.1	—	1.1	NM
Operating income (loss)	14.2	17.2	(3.0)	(17.4)%
Income (loss) related to joint ventures	0.4	1.4	(1.0)	(71.4)%
Pension termination	—	(3.2)	3.2	(100.0)%
Interest and other income (expense), net	(0.1)	(0.1)	—	— %
Interest expense	(5.0)	(5.7)	0.7	(12.3)%
Income (loss) from continuing operations	9.5	9.6	(0.1)	(1.0)%
Discontinued operations (net of income taxes)	(4.2)	1.4	(5.6)	(400.0)%
Net income (loss)	5.3	11.0	(5.7)	(51.8)%
(Income) loss attributable to discontinued noncontrolling interest	—	(0.5)	0.5	(100.0)%
Net income (loss) attributable to A&B	\$ 5.3	\$ 10.5	\$ (5.2)	(49.5)%
Basic Earnings (Loss) Per Share of Common Stock:				
Basic earnings (loss) per share - continuing operations	\$ 0.13	\$ 0.13	\$ —	— %
Basic earnings (loss) per share - discontinued operations	(0.06)	0.01	(0.07)	(700.0)%
	\$ 0.07	\$ 0.14	\$ (0.07)	(50.0)%
Diluted Earnings (Loss) Per Share of Common Stock:				
Diluted earnings (loss) per share - continuing operations	\$ 0.13	\$ 0.13	\$ —	— %
Diluted earnings (loss) per share - discontinued operations	(0.06)	0.01	(0.07)	(700.0)%
	\$ 0.07	\$ 0.14	\$ (0.07)	(50.0)%
Continuing operations available to A&B common shareholders	\$ 9.5	\$ 9.6	\$ (0.1)	(1.0)%
Discontinued operations available to A&B common shareholders	(4.2)	0.9	(5.1)	(566.7)%
Net income (loss) available to A&B common shareholders	\$ 5.3	\$ 10.5	\$ (5.2)	(49.5)%
Funds From Operations ("FFO") ¹	\$ 18.6	\$ 18.8	\$ (0.2)	(1.1)%
Core FFO ¹	\$ 21.2	\$ 20.8	\$ 0.4	1.9 %
FFO per diluted share	\$ 0.26	\$ 0.26	\$ —	— %
Core FFO per diluted share	\$ 0.29	\$ 0.29	\$ —	— %
Weighted average diluted shares outstanding (FFO/Core FFO) ²	72.6	72.8		

¹ For definitions of capitalized terms and a discussion of management's use of a non-GAAP financial measure and the required reconciliation of non-GAAP measures to GAAP measures, refer to page 30.

² May differ from figure used in the consolidated statements of operations based on differing dilutive effects for net income (loss) versus FFO/Core FFO.

The causes of material changes in the condensed consolidated statements of operations for the three months ended March 31, 2023, as compared to the three months ended March 31, 2022, are described below or in the Analysis of Operating Revenue and Profit by Segment sections below.

Operating revenue during the first quarter ended March 31, 2023, decreased 14.9%, or \$8.8 million, to \$50.4 million, due primarily to lower revenues from the Land Operations operating segment, including revenue related to development and unimproved property sales and legacy business activities that were sold in the second quarter of 2022.

Cost of operations during the first quarter ended March 31, 2023, decreased 13.9%, or \$4.6 million, to \$28.6 million, due primarily to lower costs incurred by the Land Operations operating segment from lower development and unimproved property sales and disposal of legacy business activities in the second quarter of 2022.

Gain (loss) on disposal of non-core assets, net during the first quarter ended March 31, 2023, of \$1.1 million was primarily due to the sale of the Company's ownership interest in a legacy trucking and storage business on Maui.

Income (loss) related to joint ventures decreased \$1.0 million, or 71.4%, from the first quarter ended March 31, 2022 to March 31, 2023, due primarily to lower earnings from the Company's unconsolidated investment in a materials company.

Pension termination loss of \$3.2 million during the first quarter ended March 31, 2022, resulted from a partial settlement charge related to certain benefit payments made from the master trust as a result of the Defined Benefit Plans termination process in 2022.

Loss from discontinued operations (net of income taxes) during the first quarter ended March 31, 2023, increased 4x, or \$5.6 million, to \$4.2 million due primarily to low paving volumes as a result of project delays and inclement weather during the period.

Analysis of Operating Revenue and Profit by Segment

The following analysis should be read in conjunction with the condensed consolidated financial statements and related notes thereto.

Commercial Real Estate

Financial results - First quarter of 2023 compared with 2022

Results of operations for the first quarter ended March 31, 2023 and 2022, were as follows:

(amounts in millions, except percentage data and acres; unaudited)	Three Months Ended March 31,		2023 vs 2022	
	2023	2022	\$	% ¹
Commercial Real Estate operating revenue	\$ 47.9	\$ 46.3	\$ 1.6	3.5 %
Commercial Real Estate operating costs and expenses	(25.0)	(24.0)	(1.0)	4.2 %
Selling, general and administrative	(2.0)	(1.6)	(0.4)	25.0 %
Commercial Real Estate operating profit (loss)	\$ 20.9	\$ 20.7	\$ 0.2	1.0 %
Net Operating Income ("NOI") ²	\$ 30.4	\$ 29.8	\$ 0.6	2.2 %
Same-Store Net Operating Income ("Same-Store NOI") ²	\$ 30.4	\$ 29.7	\$ 0.7	2.2 %
Gross leasable area ("GLA") in square feet ("SF") for improved properties at end of period	3.9	3.9	—	— %

¹ Amounts in this table are rounded to the nearest tenth of a million, but percentages were calculated based on thousands. Accordingly, a recalculation of some percentages, if based on the reported data, may be slightly different.

² For a discussion of management's use of non-GAAP financial measures and the required reconciliation of non-GAAP measures to GAAP measures, refer to page 30.

Commercial Real Estate operating revenue increased 3.5% or \$1.6 million, to \$47.9 million for the first quarter ended March 31, 2023, as compared to the first quarter ended March 31, 2022. Operating profit increased 1.0%, or \$0.2 million, to \$20.9 million for the first quarter ended March 31, 2023, as compared to the first quarter ended March 31, 2022. The increase in operating revenue and operating profit from the prior year was due primarily to higher base rents. Operating costs and expenses for the quarter ended March 31, 2023, increased 4.2%, or \$1.0 million, to \$25.0 million for the first quarter ended March 31, 2023, as compared to the first quarter ended March 31, 2022, due to higher property operating costs.

Commercial Real Estate portfolio additions and dispositions

There were no acquisitions or dispositions of CRE improved properties or ground lease interests in land during the three months ended March 31, 2023.

Leasing activity

During the first quarter ended March 31, 2023, the Company signed 14 new leases and 35 renewal leases for its improved properties across its retail, industrial, and office asset classes, covering 139,300 square feet of GLA. The 14 new leases consist of 22,900 square feet with an average annual base rent of \$36.41 per-square-foot. Of the 14 new leases, six leases with a total GLA of 10,300 square feet were considered comparable (i.e., renewals, for the same units, or new leases executed for units that have been vacated in the previous 12 months for comparable space and comparable lease terms) and, for these six leases, resulted in an 1.7% average base rent increase over comparable expiring leases. The 35 renewal leases consist of 116,400 square feet with an average annual base rent of \$29.53 per square foot. Of the 35 renewal leases, 26 leases with a total GLA of 65,900 square feet were considered comparable and resulted in an 8.4% average base rent increase over comparable expiring leases.

Leasing activity summarized by asset class for the three months ended March 31, 2023, were as follows:

Three Months Ended March 31, 2023

	Leases	GLA (SF)	ABR/SF	Rent Spread¹
Retail	30	81,987	\$39.62	6.0%
Industrial	17	52,463	\$16.05	10.2%
Office	2	4,852	\$37.14	3.0%

¹ Rent spread is calculated for comparable leases, a subset of the total population of leases for the period presented (described above).

Occupancy

The Company reports three types of occupancy: "Leased Occupancy," "Physical Occupancy," and "Economic Occupancy."

The Leased Occupancy percentage calculates the square footage leased (i.e., the space has been committed to by a lessee under a signed lease agreement) as a percentage of total available improved property square footage as of the end of the period reported.

The Physical Occupancy percentage calculates the square footage leased and commenced (i.e., measured when the lessee has physical access to the space) as a percentage of total available improved property space at the end of the period reported.

The Economic Occupancy percentage calculates the square footage under leases for which the lessee is contractually obligated to make lease-related payments (i.e., subsequent to the rent commencement date) to total available improved property square footage as of the end of the period reported.

The Company's improved portfolio occupancy metrics as of March 31, 2023 and 2022, were as follows:

	As of March 31, 2023	As of March 31, 2022	Basis Point Change
Leased Occupancy	93.9%	94.5%	(60)
Physical Occupancy	93.3%	94.1%	(80)
Economic Occupancy	92.4%	92.0%	40

For further context, the Company's Leased Occupancy and Economic Occupancy metrics for its improved portfolio summarized by asset class – and the corresponding occupancy metrics for a category of properties that were owned and operated for the entirety of the prior calendar year and current period, to date ("Same-Store" as more fully described below) – as of March 31, 2023 and 2022, were as follows:

Leased Occupancy

	As of March 31, 2023	As of March 31, 2022	Basis Point Change
Retail	93.6%	93.1%	50
Industrial	95.2%	98.0%	(280)
Office	87.1%	87.7%	(60)
Total Leased Occupancy	93.9%	94.5%	(60)

Economic Occupancy

	As of March 31, 2023	As of March 31, 2022	Basis Point Change
Retail	91.7%	89.7%	200
Industrial	94.6%	97.3%	(270)
Office	86.5%	85.9%	60
Total Economic Occupancy	92.4%	92.0%	40

Same-Store Leased Occupancy

	As of March 31, 2023	As of March 31, 2022	Basis Point Change
Retail	93.6%	93.1%	50
Industrial	95.1%	98.0%	(290)
Office	87.1%	87.7%	(60)
Total Same-Store Leased Occupancy	93.9%	94.5%	(60)

Same-Store Economic Occupancy

	As of March 31, 2023	As of March 31, 2022	Basis Point Change
Retail	91.7%	89.7%	200
Industrial	94.5%	97.3%	(280)
Office	86.5%	85.9%	60
Total Same-Store Economic Occupancy	92.4%	92.0%	40

Land Operations

Trends, events and uncertainties

The asset class mix of real estate sales in any given period can be diverse and may include developable subdivision lots, undeveloped land or property sold under threat of condemnation. Further, the timing of property or parcel sales can significantly affect operating results in a given period.

Operating profit reported in each period for the Land Operations segment does not necessarily follow a percentage of sales trend because the cost basis of property sold can differ significantly between transactions. For example, the sale of undeveloped land and vacant parcels in Hawai'i may result in higher margins than the sale of developed property due to the low historical cost basis of the Company's legacy landholdings.

As a result, direct year-over-year comparison of the Land Operations segment results may not provide a consistent, measurable indicator of future performance. Further, Land Operations revenue trends, cash flows from the sales of real estate, and the amounts of real estate developments for sale on the Company's condensed consolidated balance sheet do not necessarily indicate future profitability trends for this segment.

Financial results - First quarter of 2023 compared with 2022

Results of operations for the first quarter ended March 31, 2023 and 2022, were as follows:

(amounts in millions; unaudited)	Three Months Ended March 31,	
	2023	2022
Development sales revenue	\$ —	\$ 6.3
Unimproved/other property sales revenue	0.9	1.8
Other operating revenue ¹	1.6	4.8
Total Land Operations operating revenue	2.5	12.9
Land Operations operating costs and expenses	(3.6)	(9.2)
Selling, general and administrative	(0.5)	(1.2)
Gain (loss) on disposal of assets, net	1.1	—
Earnings (loss) from joint ventures	0.4	1.4
Pension termination	—	(2.3)
Interest and other income (expense), net	—	0.1
Total Land Operations operating profit (loss)	\$ (0.1)	\$ 1.7

¹ Other operating revenue includes revenue related to trucking and licensing and leasing of non-core legacy agricultural lands during the periods ended 2023 and 2022. Other revenue also includes renewable energy during the period ended 2022.

First quarter of 2023: Land Operations revenue of \$2.5 million during the first quarter ended March 31, 2023, included revenue related to the Company's legacy business activities in the Land Operations segment (primarily trucking services and licensing and leasing of non-core legacy lands), as well as the sale of an unimproved land parcel on the island of Kauai.

Land Operations operating loss of \$0.1 million during the first quarter ended March 31, 2023, was composed of the margins resulting from the real estate sales and legacy business activities noted above, carrying costs of landholdings, and the gain on disposal of the Company's ownership interest in a legacy trucking and storage business on Maui.

First quarter of 2022: Operating revenue of \$12.9 million primarily consisted of revenue related to the Company's legacy business activities in the Land Operations segment (primarily licensing and leasing of non-core legacy land, trucking services, and renewable energy), as well as sales of five development parcels at Maui Business Park and unimproved land parcels on the islands of Kauai and Maui.

Land Operations operating profit of \$1.7 million during the first quarter ended March 31, 2022, was composed of the margins resulting from the real estate sales and legacy business activities noted above and equity earnings in the Company's joint venture projects, partially offset by a settlement charge of \$2.3 million related to certain benefit payments made by the master trust in connection with the termination of the Defined Benefit Plans. Earnings from joint ventures of \$1.4 million during the first quarter ended March 31, 2022, was primarily driven by the Company's unconsolidated investment in a materials company.

Use of Non-GAAP Financial Measures

The Company uses non-GAAP measures when evaluating operating performance because management believes that they provide additional insight into the Company's and segments' core operating results, and/or the underlying business trends affecting performance on a consistent and comparable basis from period to period. These measures generally are provided to investors as an additional means of evaluating the performance of ongoing core operations. The non-GAAP financial information presented herein should be considered supplemental to, and not as a substitute for or superior to, financial measures calculated in accordance with GAAP.

FFO is presented by the Company as a widely used non-GAAP measure of operating performance for real estate companies. FFO is defined by the National Association of Real Estate Investment Trusts ("Nareit") December 2018 Financial Standards White Paper as follows: net income (loss) available to A&B common shareholders (calculated in accordance with GAAP), excluding (1) depreciation and amortization related to real estate, (2) gains and losses from the sale of certain real estate assets, (3) gains and losses from change in control, (4) impairment write-downs of certain real estate assets and investments in entities when the impairment is directly attributable to decreases in the value of depreciable real estate held by the entity, and (5) income (loss) from discontinued operations that are incidental to CRE.

The Company believes that, subject to the following limitations, FFO provides a supplemental measure to net income (calculated in accordance with GAAP) for comparing its performance and operations to those of other REITs. FFO does not represent an alternative to net income calculated in accordance with GAAP. In addition, FFO does not represent cash generated from operating activities in accordance with GAAP, nor does it represent cash available to pay distributions and should not be considered as an alternative to cash flow from operating activities, determined in accordance with GAAP, as a measure of the Company's liquidity. The Company presents different forms of FFO:

- "Core FFO" represents a non-GAAP measure relevant to the operating performance of the Company's commercial real estate business (i.e., its core business). Core FFO is calculated by adjusting CRE operating profit to exclude items noted above (i.e., depreciation and amortization related to real estate included in CRE operating profit) and to make further adjustments to include expenses not included in CRE operating profit but that are necessary to accurately reflect the operating performance of its core business (i.e., corporate expenses and interest expense attributable to this core business) or to exclude items that are non-recurring, infrequent, unusual and unrelated to the core business operating performance (i.e., not likely to recur within two years or has not occurred within the prior two years). The Company believes such adjustments facilitate the comparable measurement of the Company's core operating performance over time. The Company believes that Core FFO, which is a supplemental non-GAAP financial measure, provides an additional and useful means to assess and compare the operating performance of REITs.
- FFO represents the Nareit-defined non-GAAP measure for the operating performance of the Company as a whole. The Company's calculation refers to net income (loss) available to A&B common shareholders as its starting point in the calculation of FFO.

The Company presents both non-GAAP measures and reconciles each to the most directly-comparable GAAP measure as well as reconciling FFO to Core FFO. The Company's FFO and Core FFO may not be comparable to FFO non-GAAP measures reported by other REITs. These other REITs may not define the term in accordance with the current Nareit definition or may interpret the current Nareit definition differently.

NOI is a non-GAAP measure used internally in evaluating the unlevered performance of the Company's Commercial Real Estate portfolio. The Company believes NOI provides useful information to investors regarding the Company's financial condition and results of operations because it reflects only the contract-based income and cash-based expense items that are incurred at the property level. When compared across periods, NOI can be used to determine trends in earnings of the Company's properties as this measure is not affected by non-contract-based revenue (e.g., straight-line lease adjustments required under GAAP); by non-cash expense recognition items (e.g., the impact of depreciation and amortization expense or impairments); or by other expenses or gains or losses that do not directly relate to the Company's ownership and operations of the properties (e.g., indirect selling, general, administrative and other expenses, as well as lease termination income). The Company believes the exclusion of these items from operating profit (loss) is useful because the resulting measure captures the contract-based revenue that is realizable (i.e., assuming collectability is deemed probable) and the direct property-related expenses paid or payable in cash that are incurred in operating the Company's Commercial Real Estate portfolio, as well as trends in occupancy rates, rental rates and operating costs. NOI should not be viewed as a substitute for, or superior to, financial measures calculated in accordance with GAAP.

NOI represents total Commercial Real Estate contract-based operating revenue that is realizable (i.e., assuming collectability is deemed probable) less the direct property-related operating expenses paid or payable in cash. The calculation of NOI excludes the impact of depreciation and amortization (e.g., depreciation related to capitalized costs for improved properties, other capital expenditures for building/area improvements and tenant space improvements, as well as amortization of leasing commissions); straight-line lease adjustments (including amortization of lease incentives); amortization of favorable/unfavorable lease assets/liabilities; lease termination income; interest and other income (expense), net; selling, general, administrative and other expenses (not directly associated with the property); and impairment of commercial real estate assets.

The Company reports NOI and Occupancy on a Same-Store basis, which includes the results of properties that were owned and operated for the entirety of the prior calendar year and current reporting period, year-to-date. The Same-Store pool excludes properties under development or redevelopment and also excludes properties acquired or sold during either of the comparable reporting periods. While there is management judgment involved in classifications, new developments and redevelopments are moved into the Same-Store pool after one full calendar year of stabilized operation. Properties included in held for sale are excluded from Same-Store.

The Company believes that reporting on a Same-Store basis provides investors with additional information regarding the operating performance of comparable assets separate from other factors (such as the effect of developments, redevelopments, acquisitions or dispositions).

To emphasize, the Company's methods of calculating non-GAAP measures may differ from methods employed by other companies and thus may not be comparable to such other companies.

Reconciliations of net income (loss) available to A&B common shareholders to FFO and Core FFO for the three months ended March 31, 2023 and 2022, are as follows (in millions):

	Three Months Ended March 31,	
	2023	2022
Net Income (Loss) available to A&B common shareholders	\$ 5.3	\$ 10.5
Depreciation and amortization of commercial real estate properties	9.1	9.2
(Income) loss from discontinued operations, net of income taxes	4.2	(1.4)
Income (loss) attributable to discontinued noncontrolling interest	—	0.5
FFO	\$ 18.6	\$ 18.8
Exclude items not related to core business:		
Land Operations operating (profit) loss	0.1	(1.7)
Pension termination - CRE and Corporate	—	0.9
Non-core business interest expense	2.5	2.8
Core FFO	\$ 21.2	\$ 20.8

Reconciliations of Core FFO starting from Commercial Real Estate operating profit (loss) for the three months ended March 31, 2023 and 2022, are as follows (in millions):

	Three Months Ended March 31,	
	2023	2022
Commercial Real Estate Operating Profit (Loss)	\$ 20.9	\$ 20.7
Depreciation and amortization of commercial real estate properties	9.1	9.2
Corporate and other expense	(6.3)	(7.1)
Core business interest expense	(2.5)	(2.9)
Pension termination - CRE and Corporate	—	0.9
Core FFO	\$ 21.2	\$ 20.8

Reconciliations of Commercial Real Estate operating profit to Commercial Real Estate NOI for the three months ended March 31, 2023 and 2022, are as follows (in millions):

	Three Months Ended March 31,	
	2023	2022
CRE Operating Profit (Loss)	\$ 20.9	\$ 20.7
Plus: Depreciation and amortization	9.1	9.2
Less: Straight-line lease adjustments	(1.3)	(1.5)
Less: Favorable/(unfavorable) lease amortization	(0.3)	(0.2)
Plus: Selling, general, administrative and other expenses	2.0	1.6
NOI	30.4	29.8
Less: NOI from acquisitions, dispositions, and other adjustments	—	(0.1)
Same-Store NOI	\$ 30.4	\$ 29.7

Liquidity and Capital Resources

Overview

The Company's principal sources of liquidity to meet its business requirements and plans both in the short-term (i.e., the next twelve months from March 31, 2023) and long-term (i.e., beyond the next twelve months) have generally been cash provided by operating activities; available cash and cash equivalents; and borrowing capacity under its credit facility. The Company's primary liquidity needs for its business requirements and plans have generally been supporting its known contractual obligations and also funding capital expenditures (including recent commercial real estate acquisitions and real estate developments); shareholder distributions; and working capital needs.

The Company's ability to retain outstanding borrowings and utilize remaining amounts available under its revolving credit facility will depend on its continued compliance with the applicable financial covenants and other terms of the Company's notes payable and other debt arrangements. The Company was in compliance with its financial covenants for all outstanding balances as of March 31, 2023, and intends to operate in compliance with these covenants or seek to obtain waivers or modifications to these financial covenants to enable the Company to maintain compliance in the future. However, due to various uncertainties and factors outside of Management's control, the Company may be unable to continue to maintain compliance with certain of its financial covenants. Failure to maintain compliance with its financial covenants or obtain waivers or agree to modifications with its lenders would have a material adverse impact on the Company's financial condition.

As of March 31, 2023, the Company had \$442.2 million of fixed rate debt (after the effects of interest rate swaps) and \$37.0 million of variable-rate debt with weighted average interest rates of 4.2% and 5.9%, respectively. Other than in default, the Company does not have an obligation, nor the option in some cases, to prepay its fixed-rate debt prior to maturity and, as a result, interest rate fluctuations and the resulting changes in fair value would have little impact on the Company's financial condition or results of operations unless the Company was required to refinance such debt.

Based on its current outlook, the Company believes that funds generated from cash provided by operating activities; available cash and cash equivalent balances; and borrowing capacity under its credit facility will be sufficient to meet the needs of the Company's business requirements and plans both in the short-term (i.e., the next twelve months from March 31, 2023) and long-term (i.e., beyond the next twelve months).

Known contractual obligations

A description of material contractual commitments is contained in the Notes to Consolidated Financial Statements included in Part II, Item 8 of the 2022 Form 10-K, and relates to the Company's *Notes payable and other debt*, *Operating lease liabilities*, and *Accrued pension and post-retirement benefits*. In addition, a description of other material cash requirements, including capital expenditures, is provided in Management's Discussion and Analysis of Financial Condition and Results of Operations included in Part II, Item 7 of the 2022 Form 10-K, and includes contractual interest payments for Notes payable and other debt as well as amounts to be spent on contractual non-cancellable purchase obligations (that specifies all significant terms, including fixed or minimum quantities to be purchased, pricing structure and approximate timing of the transaction that are not recorded as liabilities in the consolidated balance sheet).

As of March 31, 2023, there were no material changes in the Company's known contractual obligations from the end of the preceding fiscal year ended December 31, 2022. Refer to Note 5 – Notes Payable and Other Debt, Note 10 – Leases - The Company as a Lessee and Note 12 – Employee Benefit Plans in this report for further discussion.

Further, a description of other commitments, contingencies and off-balance sheet arrangements is contained in the Notes to Consolidated Financial Statements included in Part II, Item 8 of the 2022 Form 10-K. As of March 31, 2023, there have been no material changes in the Company's other commitments, contingencies and off-balance sheet arrangements from the end of the preceding fiscal year ended December 31, 2022. Refer to Note 7 – Commitments and Contingencies in this report for further discussion.

Sources of liquidity

As noted above, one of the Company's principal sources of liquidity has been operating cash flows from continuing operations. For the three months ended March 31, 2023, operating cash flows from continuing operations of \$12.7 million was primarily driven by cash generated by the Commercial Real Estate segment (the Company's core business). The Company's operating cash flows from continuing operations for the three months ended March 31, 2023, represents a decrease of \$4.5 million from \$17.2 million for the three months ended March 31, 2022, due primarily to lower cash proceeds from unimproved land and development sales in 2023 as compared to 2022. Cash proceeds from unimproved/other property and development

sales decreased by \$7.0 million from \$7.8 million for the three months ended March 31, 2022, to \$0.8 million for the three months ended March 31, 2023. Total cash flows in future periods may be subject to variation from the Land Operations segment due to the varying activity in completing sales on remaining non-core assets as part of the Company's continued execution on its simplification strategy and development property sales.

The Company's other primary sources of liquidity include its cash on-hand of \$10.7 million as of March 31, 2023, and the Company's revolving credit and term facilities, which provide liquidity and flexibility on a short-term (i.e., the next twelve months from March 31, 2023), as well as long-term basis. With respect to the \$500.0 million A&B Revolver available for general A&B purposes, as of March 31, 2023, the Company had \$37.0 million of borrowings outstanding, \$1.1 million letters of credit issued against, and \$461.9 million of available capacity. This credit facility has a term through August 29, 2025, plus two six-month optional extensions.

On August 13, 2021, the Company entered into an at-the-market equity distribution agreement, or ATM Agreement, pursuant to which it may sell common stock up to an aggregate sales price of \$150.0 million. Sales of common stock, if any, made pursuant to the ATM Agreement may be sold in negotiated transactions or transactions that are deemed to be "at the market" offerings, as defined in Rule 415 of the Securities Act of 1933, as amended. Actual sales will depend on a variety of factors including market conditions, the trading price of the Company's common stock, capital needs, and the Company's determination of the appropriate sources of funding to meet such needs. As of March 31, 2023, the Company has not sold any shares under the at-the-market offering program, nor has any obligation to sell shares under the at-the-market offering program.

Other uses (or sources) of liquidity

The Company may use (or, in some periods, generate) cash through various investing activities or financing activities. Cash used in investing activities for continuing operations was \$1.5 million for the three months ended March 31, 2023, as compared to \$2.3 million for the three months ended March 31, 2022. Cash used in investing activities for continuing operations during the three months ended March 31, 2023, was primarily driven by \$3.0 million in capital expenditures partially offset by cash proceeds from the sale of the Company's legacy trucking and storage business in the Land Operations segment. Cash used in investing activities for continuing operations during the three months ended March 31, 2022, was primarily driven by capital expenditures.

As it relates to the CRE segment (i.e., its core business), the Company differentiates capital expenditures as follows (based on management's perspective on discretionary versus non-discretionary areas of spending for its CRE business):

- *Growth Capital Expenditures:* Property acquisition, development and redevelopment activity to generate income and cash flow growth.
- *Maintenance Capital Expenditures:* Activity necessary to maintain building value, the current income stream and position in the market.

Capital expenditures for the respective periods for all segments were as follows:

(dollars in millions; unaudited)	Three Months Ended March 31,		
	2023	2022	Change
CRE property acquisitions, development and redevelopment	\$ 1.3	\$ 1.1	18.2%
Building/area improvements (Maintenance Capital Expenditures)	1.1	0.5	120.0%
Tenant space improvements (Maintenance Capital Expenditures)	0.6	0.2	200.0%
Land Operations and Corporate	—	0.4	(100.0)%
Total capital expenditures ¹	\$ 3.0	\$ 2.2	36.4%

¹ Excludes capital expenditures for real estate developments to be held and sold as real estate development inventory, which are classified in the condensed consolidated statement of cash flows as operating activities and are excluded from the tables above.

Cash used in financing activities for continuing operations was \$27.4 million for the three months ended March 31, 2023, as compared to \$39.4 million for the three months ended March 31, 2022. During the three months ended March 31, 2023, the Company's net cash outlays related to financing activities were due primarily to cash dividend payments totaling \$32.0 million and repayments of secured and unsecured notes payable and other debt of \$18.0 million. These outlays were partially offset by net borrowings of \$25.0 million on the Company's revolving credit facilities. During the three months ended March 31, 2022, the Company's net cash outlays related to financing activities were due primarily to its net repayments of notes payable and other debt and deferred financing costs and line-of-credit agreement of \$10.2 million, as well as cash dividend payments totaling \$27.0 million.

The Company's Board of Directors authorized the Company to repurchase up to \$150.0 million of its common stock between February 25, 2020 and December 31, 2023. As of March 31, 2023, the Company had repurchased 277,010 shares on the open market for an aggregate purchase price, including commissions of \$4.6 million, with \$145.4 million remaining available under the stock repurchase program. The shares were retired upon repurchase. The Company did not repurchase any shares during the quarter ended March 31, 2023.

Other capital resource matters

The Company frequently utilizes §1031 and §1033 of the Internal Revenue Code of 1986, as amended (the "Code"), to obtain tax-deferral treatment when qualifying real estate assets are sold or become subject to involuntary conversion and the resulting proceeds are reinvested in replacement properties within the required time period. Proceeds from potential tax-deferred sales under §1031 of the Code are held in escrow (and presented as part of Restricted cash on the consolidated balance sheets) pending future reinvestment or are returned to the Company for general use if eligibility for tax-deferral treatment based on the required time period lapses. The proceeds from involuntary conversions under §1033 of the Code are held by the Company until the funds are redeployed.

During the three months ended March 31, 2023, the Company did not complete any transactions that would give rise to cash proceeds from sales or involuntary conversion activity that qualified under §1031 or §1033 of the Code. Further, during the three months ended March 31, 2023, there were no acquisitions utilizing eligible/available proceeds from tax-deferred sales or involuntary conversions.

As of March 31, 2023, \$0.8 million funds from tax-deferred sales were available for use and had not been reinvested under §1031 of the Code. Also as of March 31, 2023, the Company held \$3.1 million from tax-deferred involuntary conversions that had not yet been reinvested under §1033 of the Code.

Trends, events and uncertainties

General economic conditions and consumer spending patterns can negatively impact our operating results. Unfavorable local, regional, national, or global economic developments or uncertainties, including market volatility, supply chain and labor constraints, inflationary pressures, travel restrictions, war, natural disasters or effects of climate change, or a prolonged economic downturn could adversely affect our business. During the quarter ended March 31, 2023, the Federal Reserve continued its campaign to lower inflation by raising the federal funds rate from 0.25% to 4.75%. The impact of the rapid increase in the federal funds rate from 0.25% at January 1, 2022, has resulted in a tightening of credit and contributed to volatility in the banking, technology, and housing industries. The ultimate extent of the impact that these trends and events will have on the Company's business, financial condition, results of operations and liquidity and capital resources will largely depend on future developments, including the resulting impact on economic growth/recession, the impact on travel and tourism behavior and the impact on consumer confidence and discretionary and non-discretionary spending, all of which are highly uncertain and cannot be reasonably predicted.

Other Matters

Critical accounting estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America, upon which Management's Discussion and Analysis is based, requires that management exercise judgment when making estimates and assumptions about future events that may affect the amounts reported in the financial statements and accompanying notes. Future events and their effects cannot be determined with absolute certainty and actual results will, inevitably, differ from those critical accounting estimates. These differences could be material. The most significant accounting estimates inherent in the preparation of the Company's financial statements were described in Management's Discussion and Analysis of Financial Condition and Results of Operations contained in the Company's 2022 Form 10-K.

New accounting pronouncements

Refer to Notes to Consolidated Financial Statements, included in Part 1, Item 1 of this report, for a full description of the impact of recently issued accounting standards, which is incorporated herein by reference, including the expected dates of adoption and estimated effects on the Company's results of operations and financial condition.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Information concerning market risk is incorporated herein by reference to Item 7A of the Company's Form 10-K for the fiscal year ended December 31, 2022. There have been no material changes in the quantitative and qualitative disclosures about market risk since December 31, 2022.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

The Company's management, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of the Company's disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based on such evaluation, the Company's Chief Executive Officer and Chief Financial Officer have concluded that, as of March 31, 2023, the Company's disclosure controls and procedures were effective.

Internal Control Over Financial Reporting

There have not been any changes in the Company's internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the Company's fiscal first quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The information set forth under the "Legal Proceedings and Other Contingencies" section in Note 7 of Notes to Condensed Consolidated Financial Statements, included in Part I, Item 1 of this report, is incorporated herein by reference.

ITEM 1A. RISK FACTORS

There have been no material changes to the risk factors previously disclosed in Item 1A. "Risk Factors" in the Company's most recent annual report on Form 10-K.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

There were no equity securities sold by the Company during the period covered by this report that were not registered under the Securities Act.

In February 2020, the Company's Board of Directors authorized the Company to repurchase up to \$150.0 million of its common stock beginning on February 25, 2020, and ending on December 31, 2021. In October 2021, the Company's Board of Directors reauthorized the Company to repurchase up to \$150.0 million of its common stock beginning on January 1, 2022, and ending on December 31, 2023.

There were no purchases or repurchases of equity securities made by or on behalf of the Company during the quarter ended March 31, 2023, and \$145.4 million remains available under the stock repurchase program as of March 31, 2023.

ITEM 4. MINE SAFETY DISCLOSURES

The information concerning mine safety violations or other regulatory matters required by Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 104 of Regulations S-K (17 CFR 229.104) is included in Exhibit 95 to this periodic report on Form 10-Q.

ITEM 6. EXHIBITS

EXHIBIT INDEX

10. Material Contracts

10.a.(v) [First Amendment to Third Amended and Restated Credit Agreement by and among Alexander & Baldwin, Inc., Alexander & Baldwin Investments, LLC, A&B II, LLC, Grace Pacific LLC, Bank of America N.A., First Hawaiian Bank, KeyBank National Association, Wells Fargo Bank, National Association, and other lenders party thereto dated April 28, 2023..](#)

31.1 [Certification of Chief Executive Officer, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002..](#)

31.2 [Certification of Chief Financial Officer, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002..](#)

32 [Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002..](#)

95 [Mine Safety Disclosure.](#)

101 The following information from Alexander & Baldwin, Inc.'s Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2023, formatted in Inline XBRL (eXtensible Business Reporting Language): (i) Condensed Consolidated Balance Sheets as of March 31, 2023 and December 31, 2022; (ii) Condensed Consolidated Statements of Operations for the three months ended March 31, 2023 and 2022; (iii) Condensed Consolidated Statements of Comprehensive Income (Loss) for the three months ended March 31, 2023 and 2022; (iv) Condensed Consolidated Statements of Cash Flows for the three months ended March 31, 2023 and 2022; (v) Condensed Consolidated Statements of Equity and Redeemable Noncontrolling Interest for the three months ended March 31, 2023 and 2022; and (vi) Notes to Condensed Consolidated Financial Statements.

104 Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ALEXANDER & BALDWIN, INC.

May 5, 2023

By: /s/ Clayton K.Y. Chun

Clayton K.Y. Chun

Executive Vice President, Chief Financial Officer and Treasurer

May 5, 2023

By: /s/ Anthony J. Tommasino

Anthony J. Tommasino

Vice President and Controller

FIRST AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT

THIS FIRST AMENDMENT TO THIRD AMENDED AND RESTATED CREDIT AGREEMENT (this “*Amendment*”), is entered into as of April 28, 2023 (the “*Effective Date*”), among ALEXANDER & BALDWIN, LLC, a Delaware limited liability company (the “*Company*”), ALEXANDER & BALDWIN, LLC, SERIES R (“*Series R*”), ALEXANDER & BALDWIN, LLC, SERIES T (“*Series T*”), ALEXANDER & BALDWIN, LLC, SERIES M (“*Series M*,” and together with the Company, Series R and Series T, each individually, a “*Borrower*” and collectively, the “*Borrowers*”), the lenders party to the Credit Agreement defined below (each, a “*Lender*” and collectively, the “*Lenders*”), BANK OF AMERICA, N.A., as Administrative Agent (in such capacity, the “*Agent*”) and an L/C Issuer, and the L/C Issuers party to the Credit Agreement defined below (each an “*L/C Issuer*” and collectively, the “*L/C Issuers*”).

RECITALS

A. Reference is hereby made to that certain Third Amended and Restated Credit Agreement, dated as of August 31, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “*Credit Agreement*”), executed by the Borrowers, the guarantors party thereto, the Lenders, the Agent and the L/C Issuers (the Agent, the L/C Issuers, and the Lenders are individually referred to herein as a “*Credit Party*” and collectively referred to herein as the “*Credit Parties*”).

B. The Borrowers, the Agent and the Lenders party hereto have agreed, upon the following terms and conditions, to amend the Credit Agreement as provided herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **DEFINED TERMS; REFERENCES.** Unless otherwise specifically defined herein, each term used herein that is defined in the Credit Agreement shall have the meaning assigned to such term in the Credit Agreement.

2. **AMENDMENTS TO CREDIT AGREEMENT.**

(a) On and after the Effective Date, the Credit Agreement (including the Schedules and the Exhibits) is hereby amended by deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and by adding the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in *Annex A*.

(b) *Exhibit A* of the Credit Agreement is hereby amended and restated in its entirety as *Exhibit A* attached hereto.

(c) *Exhibit B-1* of the Credit Agreement is hereby deleted in its entirety.

(d) *Exhibit B-2* of the Credit Agreement is hereby deleted in its entirety.

(e) *Exhibit G* of the Credit Agreement is hereby amended and restated in its entirety as *Exhibit G* attached hereto.

3. **Amendments to other Loan Documents.**

(a) All references in the Loan Documents to the Credit Agreement shall henceforth include references to the Credit Agreement, as modified and amended hereby, and as may, from time to time, be further amended, modified, extended, renewed, and/or increased.

(b) Any and all of the terms and provisions of the Loan Documents are hereby amended and modified wherever necessary, even though not specifically addressed herein, so as to conform to the amendments and modifications set forth herein.

4. **Effectiveness.** This Amendment shall be deemed effective upon satisfaction (or waiver) of the following conditions precedent on or before the Effective Date:

(a) the Agent receives fully executed counterparts of this Amendment signed by the Loan Parties and the Credit Parties.

(b) After giving effect to this Amendment, no Default exists;

(c) the representations and warranties in the Credit Agreement, as amended by this Amendment, and each other Loan Document are true and correct in all material respects (without duplication of any materiality standards set forth therein) on and as of the date of this Amendment as though made as of the date of this Amendment, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (ii) that the representations and warranties contained in *subsections (a) and (b) of Section 5.02* of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a) and (b)*, respectively, of *Section 6.01* of the Credit Agreement; and

(d) the Borrowers shall have paid (i) to the Agent, for the benefit of each Lender, all fees required to be paid on or before the date hereof in connection with this Amendment, and (ii) the reasonable fees and expenses of the Agent's counsel.

5. **Conversion to SOFR.** After the Effective Date and following delivery of a Committed Loan Notice, each conversion of Loans from one Type to another, or a continuation of Loans, shall be a request for a new Loan bearing interest at the Term SOFR Rate or Daily SOFR Rate, as requested by the applicable Borrower; *provided*, that, in any case, to the extent any Eurodollar Rate Loan (as defined in the Credit Agreement immediately prior to the effectiveness of this Amendment) is outstanding on the Effective Date, such Loan shall continue to bear interest at the Eurodollar Rate (as defined in the Credit Agreement immediately prior to the effectiveness of this Amendment) until the end of the current Interest Period applicable to such Loan. If Borrower fails to give a timely notice requesting a conversion or continuation of any such Eurodollar Rate Loan, then the applicable Loan shall be made as, or converted to, a Daily SOFR Rate Loan at the end of the current Interest Period applicable to such Loan.

6. **Ratifications.** Each Borrower (a) ratifies and confirms all provisions of the Loan Documents as amended by this Amendment, (b) ratifies and confirms that all guaranties and assurances, granted, conveyed, or assigned to the Credit Parties under the Loan Documents are not released, reduced, or otherwise adversely affected by this Amendment and continue to guarantee and assure full payment and performance of all present and future Obligations, and (c) agrees to perform such acts and duly authorize, execute, acknowledge, deliver, file, and record such additional documents, and certificates as the Agent may reasonably request in order to create, perfect, preserve, and protect those guaranties, assurances, and liens.

7. **Representations.** Each Borrower represents and warrants to the Credit Parties that as of the Effective Date: (a) this Amendment has been duly authorized, executed, and delivered by each Loan

Party; (b) no action of, or filing with, any Governmental Authority is required to authorize, or is otherwise required in connection with, the execution, delivery, and performance by any Loan Party of this Amendment, except for actions or filings which have been duly obtained, taken, given or made and are in full force and effect; (c) the Loan Documents, as amended by this Amendment, are valid and binding upon each Loan Party and are enforceable against each Loan Party in accordance with their respective terms, except as limited by Debtor Relief Laws and by general principles of equity; (d) the execution, delivery, and performance by each Loan Party of this Amendment do not (i) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (A) any material Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (B) any material order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or (ii) violate in any material respect any applicable Law; (e) all representations and warranties in the Loan Documents are true and correct in all material respects (without duplication of any materiality qualifiers therein), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (without duplication of any materiality qualifiers therein) as of such earlier date, and except that the representations and warranties contained in *subsections (a) and (b) of Section 5.02* shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a) and (b)*, respectively, of *Section 6.01*; and (f) no Default exists.

8. **Continued Effect.** Except to the extent amended hereby, all terms, provisions and conditions of the Credit Agreement and the other Loan Documents, and all documents executed in connection therewith, shall continue in full force and effect and shall remain enforceable and binding in accordance with their respective terms.

9. **Miscellaneous.** Unless stated otherwise (a) the singular number includes the plural and *vice versa* and words of any gender include each other gender, in each case, as appropriate, (b) headings and captions may not be construed in interpreting provisions, (c) this Amendment must be construed -- and its performance enforced -- under New York law, and (d) if any part of this Amendment is for any reason found to be unenforceable, all other portions of it nevertheless remain enforceable. This Amendment constitutes a Loan Document.

10. **Electronic Execution; Electronic Records; Counterparts.**

(a) This Amendment, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties and each of the Agent and the Credit Parties agree that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Agent and each of the Credit Parties may, at its option, create one or more Electronic Copies, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and

enforceability as a paper record. Notwithstanding anything contained herein to the contrary, neither the Agent nor any L/C Issuer is under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Agent and/or an L/C Issuer has agreed to accept such Electronic Signature, the Agent and each of the Credit Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Borrower and/or any Credit Party without further verification and (b) upon the request of the Agent or any Credit Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “*Electronic Record*” and “*Electronic Signature*” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

(b) The Credit Parties shall neither be responsible for nor have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of this Agreement or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Agent’s or the applicable L/C Issuer’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Credit Parties shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Guaranty for being the maker thereof).

(c) Each Borrower and each Credit Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Amendment, any other Loan Document based solely on the lack of paper original copies of this Amendment, such other Loan Document, and (ii) waives any claim against the Agent, each Credit Party and each Related Party for any liabilities arising solely from the Agent’s and/or any Credit Party’s reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Borrowers to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

11. **Parties.** This Amendment binds and inures to the Borrowers and the Credit Parties and their respective successors and permitted assigns.

12. **ENTIRETIES. THE CREDIT AGREEMENT AS AMENDED BY THIS AMENDMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES ABOUT THE SUBJECT MATTER OF THE CREDIT AGREEMENT AS AMENDED BY THIS AMENDMENT AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

EXECUTED as of the date first stated above.

BORROWERS:

ALEXANDER & BALDWIN, LLC, as a Borrower

By: /s/ Christopher J. Benjamin
Name: Christopher J. Benjamin
Title: President and Chief Executive Officer

By: /s/ Clayton K.Y. Chun
Name: Clayton K.Y. Chun
Title: Chief Financial Officer and Treasurer

ALEXANDER & BALDWIN, LLC, SERIES R, as a Borrower

By: /s/ Christopher J. Benjamin
Name: Christopher J. Benjamin
Title: President and Chief Executive Officer

By: /s/ Clayton K.Y. Chun
Name: Clayton K.Y. Chun
Title: Chief Financial Officer and Treasurer

ALEXANDER & BALDWIN, LLC, SERIES T, as a Borrower

By: /s/ Christopher J. Benjamin
Name: Christopher J. Benjamin
Title: President and Chief Executive Officer

By: /s/ Clayton K.Y. Chun
Name: Clayton K.Y. Chun
Title: Chief Financial Officer and Treasurer

ALEXANDER & BALDWIN, LLC, SERIES M, as
a Borrower

By: /s/ Christopher J. Benjamin
Name: Christopher J. Benjamin
Title: President and Chief Executive Officer

AGENT:

BANK OF AMERICA, N.A., as the Agent

By: /s/ Bridgett J. Manduk Mowry
Name: Bridgett J. Manduk Mowry
Title: Vice President

LENDERS:

BANK OF AMERICA, N.A., as a Lender and an L/C
Issuer

By: /s/ Helen W. Chan
Name: Helen W. Chan
Title: Vice President

FIRST HAWAIIAN BANK, as a Lender and an L/C
Issuer

By: /s/ Charles C. Barbata
Name: Charles C. Barbata
Title: Senior Vice President

KEYBANK NATIONAL ASSOCIATION, as a
Lender and an L/C Issuer

By: /s/ Kristin Centracchio
Name: Kristin Centracchio
Title: Vice President

Signature Page to
First Amendment to Third Amended and Restated Credit Agreement

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**, as a Lender and an L/C Issuer

By: /s/ Rebecca Ghermezi
Name: Rebecca Ghermezi
Title: Vice President

BANK OF HAWAII, as a Lender

By: /s/ Agatha Viernes-LeGros
Name: Agatha Viernes-LeGros
Title: Senior Vice President

AMERICAN SAVINGS BANK, F.S.B., as a Lender

By: /s/ Liane Khim
Name: Liane Khim
Title: First Vice President

U.S. BANK NATIONAL ASSOCIATION, as a
Lender

By: /s/ Michael F. Diemer
Name: Michael F. Diemer
Title: Senior Vice President

CENTRAL PACIFIC BANK, as a Lender

By: /s/ Roderick Peroff
Name: Roderick Peroff
Title: Senior Vice President

GOLDMAN SACHS BANK USA, as a Lender

By: /s/ Keshia Leday
Name: Keshia Leday
Title: Authorized Signatory

Signature Page to
First Amendment to Third Amended and Restated Credit Agreement

To induce the Credit Parties to enter into this Amendment, the undersigned hereby (a) consent and agree to its execution and delivery and the terms and conditions thereof, (b) agree that this document in no way releases, diminishes, impairs, reduces, or otherwise adversely affects any guaranties, assurances, or other obligations or undertakings of any of the undersigned under any Loan Documents, and (c) waive notice of acceptance of this Amendment, which Amendment binds each of the undersigned and their respective successors and permitted assigns and inures to the benefit of the Agent and the Lenders and their respective successors and permitted assigns.

[Remainder of page intentionally blank. Signature pages follow.]

GUARANTORS:

ALEXANDER & BALDWIN, INC.

By: /s/ Christopher J. Benjamin
Name: Christopher J. Benjamin
Title: Chief Executive Officer

By: /s/ Clayton K.Y. Chun
Name: Clayton K.Y. Chun
Title: Executive Vice President and Chief
Financial Officer

**ALEXANDER & BALDWIN INVESTMENTS,
LLC**

By: Alexander & Baldwin, Inc., Its Manager

By: /s/ Christopher J. Benjamin
Name: Christopher J. Benjamin
Title: Chief Executive Officer

By: /s/ Clayton K.Y. Chun
Name: Clayton K.Y. Chun
Title: Executive Vice President and Chief
Financial Officer

A&B II, LLC

By: /s/ Christopher J. Benjamin
Name: Christopher J. Benjamin
Title: President

By: /s/ Clayton K.Y. Chun
Name: Clayton K.Y. Chun
Title: Chief Financial Officer

GRACE PACIFIC LLC

By: /s/ Christopher J. Benjamin
Name: Christopher J. Benjamin
Title: Chairman

By: /s/ Clayton K.Y. Chun
Name: Clayton K.Y. Chun
Title: Vice Chairman

ANNEX A

[See attached.]

THIRD AMENDED AND RESTATED CREDIT AGREEMENT

dated as of August 31, 2021

among

ALEXANDER & BALDWIN, LLC

and

The Other Borrowers Party Hereto,
as the Borrowers,

**ALEXANDER & BALDWIN, INC.,
ALEXANDER & BALDWIN INVESTMENTS, LLC,
A&B II, LLC,
GRACE PACIFIC LLC**

and

The Other Guarantors Party Hereto,
as the Guarantors,

BANK OF AMERICA, N.A.,
as the Agent and an L/C Issuer,

and

The Other Lenders Party Hereto

**FIRST HAWAIIAN BANK,
KEYBANK NATIONAL ASSOCIATION**
and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Syndication Agents and L/C Issuers

**BOFA SECURITIES, INC.,
FIRST HAWAIIAN BANK,
KEYBANC CAPITAL MARKETS INC.,**
and

WELLS FARGO SECURITIES, LLC
as Joint Lead Arrangers and Joint Bookrunners

(Conformed through First Amendment to Third Amended and Restated Credit Agreement dated as of April 28, 2023)

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THIRD AMENDED AND RESTATED CREDIT AGREEMENT

This **THIRD AMENDED AND RESTATED CREDIT AGREEMENT** ("**Agreement**") is entered into as of August 31, 2021, among **ALEXANDER & BALDWIN, LLC**, a Delaware limited liability company (the "**Company**"), **ALEXANDER & BALDWIN, LLC, SERIES R** ("**Series R**"), **ALEXANDER & BALDWIN, LLC, SERIES T** ("**Series T**"), **ALEXANDER & BALDWIN, LLC, SERIES M** ("**Series M**") and certain Additional Borrowers from time to time party hereto (together with the Company, Series R, Series T and Series M, each individually, a "**Borrower**" and collectively, the "**Borrowers**"), **ALEXANDER & BALDWIN, INC.**, a Hawaii corporation ("**Holdings**"), **ALEXANDER & BALDWIN INVESTMENTS, LLC**, Delaware limited liability company ("**A&B**"), **A&B II, LLC**, a Hawaii limited liability company ("**Grace Holdings**"), **GRACE PACIFIC LLC**, a Hawaii limited liability company ("**Grace**"), the other Guarantors from time to time party hereto, each lender from time to time party hereto (collectively, the "**Lenders**" and individually, a "**Lender**"), **BANK OF AMERICA, N.A.**, as the Agent and an L/C Issuer, and **FIRST HAWAIIAN BANK, KEYBANK NATIONAL ASSOCIATION** and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as L/C Issuers.

The Loan Parties are party to that certain Second Amended and Restated Credit Agreement dated as of September 15, 2017 (as amended, supplemented or otherwise modified from time to time until (but not including) the Closing Date, the "**Existing Credit Agreement**") with the lenders party thereto and Bank of America, N.A., as administrative agent, and the other parties party thereto.

The parties to this Agreement desire to amend the Existing Credit Agreement as set forth herein and to restate the Existing Credit Agreement in its entirety to read as follows. This Agreement is not a novation of the Existing Credit Agreement.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

I. DEFINITIONS AND ACCOUNTING TERMS.

1.01 Defined Terms

. As used in this Agreement, the following terms shall have the meanings set forth below:

"**A&B**" has the meaning specified in the introductory paragraph hereto.

~~"**Absolute Rate**" means a fixed rate of interest expressed in multiples of 1/100th of one basis point.~~

~~"**Absolute Rate Loan**" means a Bid Loan that bears interest at a rate determined with reference to an Absolute Rate.~~

"**Additional Borrower**" has the meaning set forth in **Section 6.07(b)**.

"**Additional Guarantor**" has the meaning set forth in **Section 6.07(a)**.

"**Administrative Questionnaire**" means an Administrative Questionnaire in substantially the form of **Exhibit E-2** or any other form approved by the Agent.

“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” means, without duplication, any Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, another Person. A Person shall be deemed to control another Person if such first Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of the Loan Documents, the term **“Affiliate,”** when used in reference to the Borrowers, shall not include Subsidiaries of the Borrowers.

“Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Agent’s Office” means the Agent’s address and, as appropriate, account as set forth on **Schedule 10.02**, or such other address or account as the Agent may from time to time notify to the Company and the Lenders in writing.

“Aggregate Commitments” means, as of any date of determination, the Commitments of all the Lenders. The initial amount of the Aggregate Commitments in effect on the Closing Date is \$500,000,000. The Aggregate Commitments may be increased or decreased from time to time as provided herein.

“Agreement” has the meaning specified in the introductory paragraph hereto.

“Agricultural Land” means land owned in fee by Holdings or its Subsidiaries which is located in the State of Hawaii and zoned exclusively for agricultural purposes, but excluding watershed land, conservation land and pastureland.

“Applicable Cap Rates” means (i) 6.00% for industrial Investment Properties, (ii) 6.50% for retail Investment Properties, (iii) 6.50% for office Investment Properties, (iv) 6.00% for Leased Non-Agricultural Land, which land has industrial improvements located thereon, and which is located in the State of Hawaii, (v) 6.50% for Leased Non-Agricultural Land, which land has retail improvements located thereon, and which is located in the State of Hawaii, and (vi) 6.50% for Leased Non-Agricultural Land, which land has office improvements located thereon, and which is located in the State of Hawaii.

“Applicable Percentage” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Commitment at such time. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to **Section 8.02** or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on **Schedule 2.01** or in the Assignment and Assumption or other documentation pursuant to which such Lender becomes a party hereto, as applicable. The Applicable Percentages shall be subject to adjustment as provided in **Section 2.17**.

“Applicable Rate” means with respect to the facility fee payable pursuant to **Section 2.09(a)**, ~~the Eurodollar Rate~~ Term SOFR, Daily Simple SOFR, the Base Rate and the Letter of Credit Fee, from time to time, the following percentages *per annum*, based upon (a) until Holdings attains an Investment Grade Rating and the Borrowers notify the Agent in writing that the Borrowers irrevocably elect to convert calculation of the Applicable Rate to the Ratings-Based Applicable Rate (defined below) and specifying

the date for such election to be effective (satisfaction of the forgoing conditions being the “*Applicable Rate Conversion Trigger*”), the Total Debt to Total Adjusted Asset Value Ratio (the “*Financials-Based Applicable Rate*”), and (b) following the Applicable Rate Conversion Trigger, the Debt Rating (the “*Ratings-Based Applicable Rate*”), in each case as set forth below:

Financials-Based Applicable Rate

Pricing Level	Total Debt to Total Adjusted Asset Value Ratio	Facility Fee	Eurodollar Rate Term SOFR and Daily Simple SOFR	Base Rate	Letter of Credit Fee
I	<35.00%	0.15 %	1.05%	0.05%	1.05%
II	≥35.00% - <40.00%	0.15 %	1.10%	0.10%	1.10%
III	≥40.00% - <45.00%	0.20 %	1.15%	0.15%	1.15%
IV	≥45.00% - <50.00%	0.20 %	1.25%	0.25%	1.25%
V	≥50.00% - <55.00%	0.30 %	1.30%	0.30%	1.30%
VI	≥55.00%	0.30 %	1.50%	0.50%	1.50%

Ratings-Based Applicable Rate

Pricing Level	Debt Rating	Facility Fee	Eurodollar Rate Term SOFR and Daily Simple SOFR	Base Rate	Letter of Credit Fee
I	≥ A-/A3/A-	0.125%	0.725%	0.000%	0.725%
II	BBB+/Baa1/BBB+	0.150%	0.775%	0.000%	0.775%
III	BBB/Baa2/BBB	0.200%	0.850%	0.000%	0.850%
IV	BBB-/Baa3/BBB-	0.250%	1.050%	0.050%	1.050%
V	<BBB-/Baa3/BBB-	0.300%	1.400%	0.400%	1.400%

- (a) At all times that the Financials-Based Applicable Rating applies:

(i) The Applicable Rate in effect on the Closing Date through the date on which the first Compliance Certificate is received by the Agent after the Closing Date shall be based on Pricing Level I;

(ii) Thereafter the Applicable Rate shall be determined by reference to the Total Debt to Total Adjusted Asset Value Ratio as set forth in the most recent Compliance Certificate received by the Agent pursuant to **Section 6.01(c)**; and

(iii) Any increase or decrease in the Applicable Rate resulting from a change in the Total Debt to Total Adjusted Asset Value Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to **Section 6.01(c)**; *provided, however*, that if such Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level VI shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered in accordance with **Section 6.01(c)**, whereupon the Applicable Rate shall be adjusted based upon the calculation of the Total Debt to Total Adjusted Asset Value Ratio contained in such Compliance Certificate.

(b) At all times that the Ratings-Based Applicable Rating applies:

(i) each change in the Applicable Rate resulting from a publicly announced change in the Debt Rating shall be effective, in the case of an upgrade, during the period commencing on the date of delivery by the Borrowers to the Agent of notice thereof pursuant to **Section 6.01(j)** and ending on the date immediately preceding the effective date of the next such change and, in the case of a downgrade, during the period commencing on the date of the public announcement thereof and ending on the date immediately preceding the effective date of the next such change. If the rating system of Fitch, Moody's or S&P shall change, or if either such rating agency shall cease to be in the business of rating corporate debt obligations, the Borrowers and the Lenders shall negotiate in good faith to amend this definition to reflect such changed rating system or the unavailability of ratings from such rating agency and, pending the effectiveness of any such amendment, the Applicable Rate shall be determined by reference to the rating most recently in effect prior to such change or cessation.

(ii) If at any such time Holdings has only two Debt Ratings, and such Debt Ratings are split, then

(A) If the difference between such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Ratings-Based Applicable Rate shall be the rate per annum that would be applicable if the higher of the Debt Ratings were used; and

(B) If the difference between such Debt Ratings is two ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch) or more, the Ratings-Based Applicable Rate shall be the rate per annum that would be applicable if the rating that is one lower than the higher of the applicable Debt Ratings were used; and

(iii) If at any time Holdings has three Debt Ratings, and such Debt Ratings are split, then:

(A) If the difference between the highest and the lowest such Debt Ratings is one ratings category (e.g., Baa2 by Moody's and BBB- by S&P or Fitch), the Ratings-Based Applicable Rate shall be the rate per annum that would be applicable if the highest of the Debt Ratings were used; and

(B) If the difference between such Debt Ratings is two ratings categories (e.g., Baa1 by Moody's and BBB- by S&P or Fitch) or more, the Ratings-Based Applicable Rate shall be the rate per annum that would be applicable if the average of the two highest Debt Ratings were used, *provided* that if such average is not a recognized rating category, then the Ratings-Based Applicable Rate shall be the rate per annum that would be applicable if the second highest Debt Rating of the three were used;

(iv) if Holdings has only one Debt Rating, the Pricing Level that is one level lower than that of such Debt Rating shall apply; and

(v) if Holdings does not have any Debt Rating, Pricing Level V shall apply.

"Applicable Rate Conversion Trigger" has the meaning specified in the definition of **"Applicable Rate."**

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arrangers" means each of (a) BofA Securities, Inc., (b) First Hawaiian Bank, (c) Keybank Capital Markets Inc., and (d) Wells Fargo Securities, LLC, each in its capacity as a joint lead arranger and joint bookrunner.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by **Section 10.06(b)**), and accepted by the Agent, in substantially the form of **Exhibit E-1** or any other form (including electronic documentation generated by an electronic platform) approved by the Agent.

"Audited Financial Statements" means the audited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended December 31, 2020, and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

"Availability Period" means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to **Section 2.06**, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to **Section 8.02**.

~~**"Available Tenor"** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.~~

"Bail-In Action" means the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bank of America**” means Bank of America, N.A. and its successors.

“**Base Rate**” means for any day a fluctuating rate *per annum* equal to the highest of (a) the Federal Funds Rate *plus* 1/2 of 1.00%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” (c) ~~the Eurodollar Rate~~ Term SOFR *plus* 1.00%, and (d) 1.00%; *provided* that if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“**Base Rate Loan**” means a Committed Loan that bears interest based on the Base Rate.

“**Benchmark**” means, initially, LIBOR; *provided* that if a replacement of the Benchmark has occurred pursuant to ~~Section 3.03(c)~~, then “**Benchmark**” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “**Benchmark**” shall include, as applicable, the published component used in the calculation thereof.

“**Benchmark Replacement**” means:

(a) ~~For purposes of Section 3.03(c)(i), the first alternative set forth below that can be determined by the Agent:~~

(i) ~~the sum of: (A) Term SOFR and (B) 0.11448% (11.448 basis points) for an Available Tenor of one month’s duration, 0.26161% (26.161 basis points) for an Available Tenor of three months’ duration, and 0.42826% (42.826 basis points) for an Available Tenor of six months’ duration, or~~

(ii) ~~the sum of: (A) Daily Simple SOFR and (B) 0.26161% (26.161 basis points);~~

~~provided that, if initially LIBOR is replaced with the rate contained in clause (a)(ii) above (Daily Simple SOFR plus the applicable spread adjustment) and subsequent to such replacement, the Agent determines that Term SOFR has become available and is administratively feasible for the Agent in its sole discretion, and the Agent notifies the Borrowers and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than 30 days after the date of such notice, the Benchmark Replacement shall be as set forth in clause (a)(i) above; and~~

(b) ~~For purposes of Section 3.03(c)(ii), the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by the~~

Agent and the Borrowers as the replacement Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by a Relevant Governmental Body, for U.S. dollar-denominated syndicated credit facilities at such time;

provided that, if the Benchmark Replacement as determined pursuant to ~~clause (a) or (b)~~ above would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement and the other Loan Documents.

Any Benchmark Replacement shall be applied in a manner consistent with market practice; ~~provided that to the extent such market practice is not administratively feasible for the Agent, such Benchmark Replacement shall be applied in a manner as otherwise reasonably determined by the Agent.~~

***“Benchmark Replacement Conforming Changes”** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of **“Base Rate,”** the definition of **“Business Day,”** the definition of **“Interest Period,”** timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents);*

***“Benchmark Transition Event”** means, with respect to any then-current Benchmark other than LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark or a Governmental Authority with jurisdiction over such administrator announcing or stating that all Available Tenors are or will no longer be representative, or made available, or used for determining the interest rate of loans, or shall or will otherwise cease, ~~provided that, at the time of such statement or publication, there is no successor administrator that is satisfactory to the Agent, that will continue to provide any representative tenors of such Benchmark after such specific date.~~*

***“Beneficial Ownership Certification”** means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.*

***“Beneficial Ownership Regulation”** means 31 C.F.R. § 1010.230.*

***“Benefit Plan”** means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”*

***“Bid Borrowing”** means a borrowing consisting of simultaneous Bid Loans of the same Type from each of the Lenders whose offer to make one or more Bid Loans as part of such borrowing has been accepted under the auction bidding procedures described in ~~Section 2.04.~~*

***“Bid Loan”** has the meaning specified in ~~Section 2.04(a).~~*

~~“**Bid Loan Lender**” means, in respect of any Bid Loan, the Lender making such Bid Loan to the applicable Borrower.~~

~~“**Bid Loan Sublimit**” means, as of any date of determination, an amount equal to fifty percent (50%) of the Aggregate Commitments as of such date. The Bid Loan Sublimit is part of, and not in addition to, the Aggregate Commitments.~~

~~“**Bid Request**” means a written request for one or more Bid Loans substantially in the form of Exhibit B-1.~~

“**Borrower**” and “**Borrowers**” each have the meaning specified in the introductory paragraph hereto.

“**Borrower Materials**” has the meaning specified in *Section 6.01*.

“**Borrower’s Instruction Certificate**” means the instructions substantially in the form of *Exhibit K*.

“**Borrowing**” means a Committed Borrowing ~~or a Bid Borrowing, as the context may require.~~

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Agent’s Office is located ~~and, if such day relates to any Eurodollar Rate Loan or LIBOR Daily Rate Loan, means any such day that is also a London Banking Day.~~

“**Capitalized Lease Obligation**” means, with respect to any Person, any rental obligation of such Person which, under GAAP in effect and adopted by Holdings as of the Closing Date, is or will be required to be capitalized on the books of such Person, taken at the amount thereof accounted for as indebtedness (net of interest expense) in accordance with such principles; provided, that the adoption or issuance of any accounting standards after the Closing Date will not cause any rental obligation that was not or would not have been a Capitalized Lease Obligation prior to such adoption or issuance to be deemed to be a Capitalized Lease Obligation.

“**Cash Collateralize**” means to pledge and deposit with or deliver to the Agent, for the benefit of one or more of the L/C Issuer or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations, cash or deposit account balances or, if the Agent and the L/C Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Agent and the L/C Issuer. “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such Cash Collateral and other credit support.

“**Change in Law**” means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith by any Governmental Authority and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the

United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Change of Control**” means:

(a) the acquisition, after the Closing Date, by any “person” or “group” (as such terms are used in *Sections 13(d)(3)* and *14(d)(2)* of the Securities Exchange Act of 1934) (but excluding any employee benefit plan of such persons or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) of outstanding shares of voting stock representing more than 50% of voting control of Holdings;

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of Holdings cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in *clause (i)* above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in *clauses (i)* and *(ii)* above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; or

(c) the failure of Holdings to directly or indirectly own 100% of the Equity Interests of any Borrower at any time; *provided that*, the failure of Holdings to directly or indirectly own 100% of the Equity Interests of any Borrower as a result of the sale or other transfer of Equity Interests in A&B for purposes of acquiring real estate shall not result in a Change of Control so long as (i) Holdings continues to (x) directly or indirectly own more than 50% of the Equity Interests in A&B and (y) control A&B (by possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of A&B, whether through the ownership of voting securities, by contract or otherwise) and (ii) A&B continues to directly or indirectly own 100% of the Equity Interests in the Borrowers.

“**Closing Date**” means August 31, 2021.

“**Code**” means the Internal Revenue Code of 1986.

“**Commitment**” means, as to each Lender, its obligation to (a) make Committed Loans to the Borrowers pursuant to *Section 2.01* and (b) purchase participations in L/C Obligations in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on *Schedule 2.01* or in the Assignment and Assumption or other documentation pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“**Committed Borrowing**” means a borrowing consisting of simultaneous Committed Loans of the same Type and, in the case of EurodollarTerm SOFR Rate Committed Loans, having the same Interest Period made by each of the Lenders pursuant to *Section 2.01*.

“**Committed Loan**” has the meaning specified in *Section 2.01*.

“**Committed Loan Notice**” means a notice of (a) a Committed Borrowing, (b) a conversion of Committed Loans from one Type to the other, or (c) a continuation of EurodollarTerm SOFR Rate Committed Loans, pursuant to *Section 2.02(a)*, which, if in writing, shall be substantially in the form of

Exhibit A or such other form as may be approved by the Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

“Company” has the meaning specified in the introductory paragraph hereto.

~~**“Competitive Bid”** means a written offer by a Lender to make one or more Bid Loans, substantially in the form of *Exhibit B-2*, duly completed and signed by a Lender.~~

“Compliance Certificate” means a certificate signed in the name of the Borrowers by a Responsible Officer of the Borrowers in substantially the form of *Exhibit F*.

“Conforming Changes” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate, Daily Simple SOFR, or Term SOFR, as applicable, any technical, administrative or operational changes to the definitions of “Base Rate”, “Daily Simple SOFR”, “SOFR”, “Term SOFR”, and “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Business Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the reasonable discretion of the Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated Interest Expense” means, for any period of determination, for Holdings and its Subsidiaries on a consolidated basis the sum of total interest expense determined in accordance with GAAP (including for the avoidance of doubt capitalized interest and imputed interest in respect of Capitalized Lease Obligations) for such period.

“Consolidated Joint Venture Entity” has the meaning specified in the definition of **“Total Adjusted Asset Value”**.

“Consolidated Net Income” means, for any period of determination, the net income or loss (excluding extraordinary gains or losses) of Holdings and its Subsidiaries on a consolidated basis for such period on a consolidated basis, as determined in accordance with GAAP.

“Consolidated Shareholders’ Equity” means, at any time of determination thereof, for Holdings and its Subsidiaries on a consolidated basis determined in accordance with GAAP, the sum of (a) consolidated total equity, and (b) any consolidated mezzanine equity (or other temporary or non-permanent equity); *provided* that any determination of Consolidated Shareholders’ Equity shall exclude (i) all non-cash adjustments to Consolidated Shareholders’ Equity resulting from the application of the Financial Accounting Standards Board Accounting Standards Codification Topic 715, Retirement

Benefits, and (ii) to the extent otherwise included under the immediately preceding *clauses (a) and (b)*, non-controlling interests in any Subsidiary of Holdings.

“**Consolidated Total Assets**” means, at any time of determination thereof, the consolidated total assets of Holdings and its Subsidiaries on a consolidated basis determined in accordance with GAAP.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Covered Entity**” has the meaning specified in *Section 10.20*.

“**Credit Extension**” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“**Daily Simple SOFR**” means, with respect to any applicable determination date—means the secured overnight financing rate, (“SOFR”) a SOFR published on such date by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) the fifth (5th) U.S. Government Securities Business Day preceding such day on the Federal Reserve Bank of New York’s website (or any successor source); provided, however, that if such day is not a U.S. Government Securities Business Day, then Daily Simple SOFR means such rate so published on the fifth (5th) U.S. Government Securities Business Day preceding the first (1st) U.S. Government Securities Business Day immediately prior thereto; plus (b) the SOFR Adjustment. If Daily Simple SOFR as so determined would be less than zero (0), such rate shall be deemed to be zero (0) for purposes of the Loans and Loan Documents.

“**Daily SOFR Rate Loan**” means a Loan made hereunder with respect to which the interest rate is calculated by reference to Daily Simple SOFR.

“**Debt**” means, as to any Person at the time of determination thereof without duplication, (a) any indebtedness of such Person (i) for borrowed money, including commercial paper and revolving credit lines, (ii) evidenced by bonds, debentures or notes or otherwise representing extensions of credit, whether or not representing obligations for borrowed money or (iii) for the payment of the deferred purchase price of property or services, except trade accounts payable and accrued expenses arising in the ordinary course of business, regardless of when such liability or other obligation is due and payable, (b) Capitalized Lease Obligations of such Person, (c) Guarantees, assumptions and endorsements by such Person (other than endorsements of negotiable instruments for collection in the ordinary course of business) of Debt of another Person of the types described in *clauses (a) and (b)* hereof, and (d) Debt of the types described in *clauses (a) through (c)* hereof of another Person (whether or not assumed) that is secured by Liens on the property or other assets of such Person. “**Debt**” shall not include a reimbursement obligation incurred in connection with a standby Letter of Credit issued (i) in support of trade payables or (ii) as condition to receiving (A) a governmental entitlement, (B) a performance bond or (C) a performance guaranty, in each case under the immediately preceding *clauses (i) and (ii)* to the extent such reimbursement obligation is contingent and to the extent the aggregate amount of such standby letters of credit does not exceed \$10,000,000 at any time outstanding.

“**Debt Rating**” means the long term unsecured senior, non-credit enhanced debt rating of Holdings by S&P, Moody’s, or Fitch.

“**Debtor Relief Laws**” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement,

receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

~~“Debt Rating” means the long term unsecured senior, non-credit enhanced debt rating of Holdings by S&P, Moody’s, or Fitch.~~

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate *plus* (ii) the Applicable Rate, if any, applicable to Base Rate Loans *plus* (iii) 2% *per annum*; *provided, however*, that with respect to a Eurodollar Term SOFR Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan *plus* 2% *per annum*, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate *plus* 2% *per annum*.

“Defaulting Lender” means, subject to **Section 2.17(b)**, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Agent and the Company in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agent, the L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified the Company, the Agent or the L/C Issuer in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Agent or the Company, to confirm in writing to the Agent and the Company that it will comply with its prospective funding obligations hereunder (*provided* that such Lender shall cease to be a Defaulting Lender pursuant to this **clause (c)** upon receipt of such written confirmation by the Agent and the Company), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, or (iii) become the subject of a Bail-in Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of **clauses (a)** through **(d)** above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 2.17(b)**) as of the date established therefor by the Agent in a written notice of such determination, which shall be delivered by the Agent to the Company, the L/C Issuer, and each other Lender promptly following such determination.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any comprehensive Sanction.

“Development Real Properties” means, at any time of determination for Holdings and its Subsidiaries, any real property asset under development, construction, renovation or rehabilitation that (i) is then treated as an asset under development under GAAP, (ii) is located in the State of Hawaii, the Territory of Guam or the continental United States, and (iii) has been designated by the Borrowers in a written notice to the Agent as a “Development Real Property.”

“Disqualified Institution” means, on any date, (a) any Person set forth on **Schedule 10.06** and (b) any other Person that is a competitor of the Borrowers or any of their Subsidiaries, which Person has been designated by the Borrowers as a **“Disqualified Institution”** by written notice to the Agent and the Lenders (by posting such notice to the Platform) not less than two Business Days prior to such date (such designation by the Borrowers being acceptable to the Agent in its sole discretion); *provided that “Disqualified Institutions” shall exclude any Person that the Borrowers have designated as no longer being a “Disqualified Institution” by written notice delivered to the Agent and the Lenders from time to time.*

“Dividing Person” has the meaning specified in the definition of **“Division.”**

“Division” means the division of the assets, liabilities and/or obligations of a Person (the **“Dividing Person”**) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

“Dollar” and **“\$”** mean lawful money of the United States.

~~**“Early Opt-in Effective Date”** means, with respect to any Early Opt-in Election, the sixth Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Agent has not received, by 5:00 p.m. (New York City time) on the fifth Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.~~

~~**“Early Opt-in Election”** means the occurrence of:~~

~~(1) — a determination by the Agent, or a notification by the Borrowers to the Agent that the Borrowers have made a determination, that U.S. dollar-denominated syndicated credit facilities currently being executed, or that include language similar to that contained in **Section 3.03(e)**, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR, and~~

~~(2) — the joint election by the Agent and the Borrowers to replace LIBOR with a Benchmark Replacement and the provision by the Agent of written notice of such election to the Lenders.~~

“EBITDA” means, for any period, for Holdings and its Subsidiaries on a consolidated basis, Consolidated Net Income (for the avoidance of doubt, before deduction for non-controlling interests in any Subsidiary of Holdings) for such period plus, to the extent deducted in the calculation thereof, (a) Consolidated Interest Expense, (b) Federal, state, local and foreign income taxes and similar taxes, including, any franchise taxes or other taxes based on income, profits or capital, (c) depreciation and amortization expenses, (d) all other non-cash expenses and other charges, (e) non-recurring one-time cash expenses incurred in accordance with GAAP in connection with or as a result of the Triggering Event; provided that the aggregate amount added back under this **clause (e)** for all periods shall not exceed

\$100,000,000 and shall only be permitted to be added back if incurred no later than 18 months after the Triggering Event, (f) any gains or losses resulting from the disposition of any asset of Holdings or any Subsidiary outside of the ordinary course of business including, any net loss from discontinued operations and any net loss on the disposal of discontinued operation, (g) fees, expenses, premiums and other charges in connection with the issuance, the issuance of Equity Interests, any refinancing transaction, any amendment or other modification of any debt instrument, the making of any acquisition or any disposition (other than a disposition of an asset in the ordinary course of business), in each case whether or not consummated, (h) any income or gain and any loss or expense in each case resulting from early extinguishment of Debt, and (i) any income or gain or any expense or loss resulting from a Swap Contract (including by virtue of a termination thereof); *provided* that EBITDA shall exclude non-cash gains or losses resulting from the write-up or write-down of assets.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in **clause (a)** of this definition, or (c) any financial institution established in an EEA Member Country which is a Subsidiary of an institution described in **clauses (a) or (b)** of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under **Section 10.06(b)(iii)** and **(v)** (subject to such consents, if any, as may be required under **Section 10.06(b)(iii)**).

“Environmental and Safety Laws” means all Federal, state and local laws, regulations and ordinances, relating to the discharge, handling, disposition or treatment of Hazardous Materials and other substances or the protection of the environment or of employee health and safety, including, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. *Section 1801 et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. *Section 6901 et seq.*), the Federal Water Pollution Control Act (33 U.S.C. *Section 1251 et seq.*), the Clean Air Act (42 U.S.C. *Section 7401 et seq.*), the Toxic Substances Control Act (15 U.S.C. *Section 2601 et seq.*), the Occupational Safety and Health Act (29 U.S.C. *Section 651 et seq.*) and the Emergency Planning and Community Right-To-Know Act (42 U.S.C. *Section 11001 et seq.*).

“Environmental Liabilities and Costs” means as to any Person, all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, contribution, cost recovery, costs and expenses (including all fees, disbursements and expenses of counsel, expert and consulting fees, and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand, by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, permit, order or agreement with any Federal, state or local governmental authority or other Person, arising from environmental, health or safety conditions, or the release or threatened release of a contaminant, pollutant or Hazardous Material into the environment, resulting from the operations of such Person or its

subsidiaries, or breach of any Environmental and Safety Law or for which such Person or its Subsidiaries is otherwise liable or responsible.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any corporation which is a member of the same controlled group of corporations as the Borrowers within the meaning of *Section 414(b)* of the Code, or any trade or business which is under common control with the Borrowers within the meaning of *Section 414(c)* of the Code.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

~~**“Eurodollar Bid Margin”** means the margin above or below the Eurodollar Rate to be added to or subtracted from the Eurodollar Rate, which margin shall be expressed in multiples of 1/100th of one basis point.~~

~~**“Eurodollar Margin Bid Loan”** means a Bid Loan that bears interest at a rate based upon the Eurodollar Rate.~~

~~**“Eurodollar Rate”** means:~~

~~(a) — for any Interest Period with respect to a Eurodollar Rate Loan, the rate *per annum* equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period) (“**LIBOR**”), as published by Bloomberg (or such other commercially available source providing such quotations as may be designated by the Agent from time to time) (in such case, the “**LIBOR Rate**”) at or about 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and~~

~~(b) — for any interest calculation with respect to a Base Rate Loan on any date, the rate *per annum* equal to the LIBOR Rate, at or about 11:00 a.m., London time, two Business Days prior to such date for Dollar deposits with a term of one month commencing that day;~~

~~provided, that if the Eurodollar Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.~~

~~**“Eurodollar Rate Committed Loan”** means a Committed Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”~~

~~**“Eurodollar Rate Loan”** means a Eurodollar Rate Committed Loan or a Eurodollar Margin Bid Loan.~~

“**Event of Default**” has the meaning specified in **Section 8.01**.

“**Excluded Swap Obligations**” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to **Section 11.09** and any other “keepwell, support or other agreement” for the benefit of such Guarantor and any and all Guarantees of such Guarantor’s Swap Obligations by other Loan Parties) at the time the Guarantee of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, then such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes excluded in accordance with the first sentence of this definition.

“**Excluded Taxes**” means, any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrowers under **Section 10.13**) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to **Section 3.01(a)(ii)** or **3.01(c)**, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with **Section 3.01(e)** and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

“**Existing Credit Agreement**” has the meaning specified in the recitals hereto.

“**Existing Letters of Credit**” means those letters of credit set forth on **Schedule 1.01**.

“**FATCA**” means **Sections 1471 through 1474** of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to **Section 1471(b)(1)** of the Code and any applicable intergovernmental agreements and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“**Federal Funds Rate**” means, for any day, the rate *per annum* ~~equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published~~ calculated by the Federal Reserve Bank of New York ~~based on the Business Day next succeeding such day; provided that~~ ’s federal funds transactions by depository institutions (a) if as determined in such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding

Business Day, ~~and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Agent by the Federal Reserve Bank of New York as the federal funds effective rate;~~ provided ~~further~~ that if the Federal Funds Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Fee Letters” means those certain letter agreements by and among Holdings or the Company, the Agent and/or one or more Arrangers.

“Financials-Based Applicable Rate” has the meaning specified in the definition of **“Applicable Rate.”**

“First Extended Maturity Date” means February 27, 2026.

“Fitch” means Fitch, Inc., and any successor thereto.

“Fixed Charges” means as of any date of determination for Holdings and its Subsidiaries on a consolidated basis, (a) Consolidated Interest Expense, plus (b) preferred dividends of Holdings and its Subsidiaries accrued during such period, plus (c) scheduled principal payments during such period (excluding (i) any “balloon payment” and (ii) any scheduled principal payments that represent amortization of the Series A, B, C, F and G Notes issued under the Note Purchase Agreement).

“Fixed Charge Coverage Ratio” means, as of any date of determination, the ratio of (a) EBITDA to (b) Fixed Charges, in each case for the period of four consecutive fiscal quarters ending on or immediately prior to such date.

“Foreign Lender” means a Lender that is not a U.S. Person.

“Foreign Subsidiary” means any Subsidiary that is incorporated or organized under the laws of a country other than the United States or any state thereof or the District of Columbia; *provided* that any Subsidiary that is not described in the preceding clause, but which owns voting stock in one or more Foreign Subsidiaries but owns no other material assets and does not engage in any trade or business (other than acting as a holding company for such voting stock in Foreign Subsidiaries) shall be deemed to be a Foreign Subsidiary hereunder; *provided, further*, that any Subsidiary that is disregarded as separate from its owner for United States federal income tax purposes and which owns voting stock in one or more Foreign Subsidiaries shall be deemed to be a Foreign Subsidiary.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified

Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, and rules, regulations and interpretations of the SEC, in effect from time to time.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank).

“Grace” has the meaning specified in the introductory paragraph hereto.

“Grace Holdings” has the meaning specified in the introductory paragraph hereto.

“Guarantee” means, without duplication, any obligation, contingent or otherwise, of any Person guaranteeing or having the economic effect of guaranteeing any Debt of any other Person (the primary obligor) in any manner, directly or indirectly, and including any obligation of any partnership or joint venture in which such Person is a general partner or joint venturer if such obligation is not expressly non-recourse to such Person; but excluding (a) a completion guarantee issued in connection with a real estate development project to the extent contingent and not constituting a direct or indirect obligation to re-pay Debt and (b) environmental indemnification agreements.

“Guarantor” means, collectively, Holdings, A&B, Grace, Grace Holdings, and each Additional Guarantor; *provided that* **“Guarantors”** shall exclude Grace and Grace Holdings if such Persons have been released from the Guaranty pursuant to **Section 9.12**.

“Guaranty” means the Guaranty made by the Guarantors in favor of the Agent and the other holders of the Obligations pursuant to **Article XI**.

“Hazardous Materials” means (a) any material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “toxic substances” or any other formulations intended to define, list or classify substances by reason of their deleterious properties, (b) any oil, petroleum or petroleum derived substance, (c) any flammable substances or explosives, (d) any radioactive materials, (e) asbestos in any form, (f) electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty parts per million, (g) pesticides or (h) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental agency or authority or which may or could pose a hazard to the health and safety of persons in the vicinity thereof.

“Holdings” has the meaning specified in the introductory paragraph hereto.

“Honor Date” means the date of any payment by the L/C Issuer under a Letter of Credit.

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

“**Indemnitees**” has the meaning specified in *Section 10.04(b)*.

“**Information**” has the meaning specified in *Section 10.07*.

“**Initial Maturity Date**” means August 29, 2025.

“**Interest Payment Date**” means, (a) as to any ~~Loan other than a Base Rate Loan or LIBOR Daily Term SOFR~~ Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; *provided, however*, that if any Interest Period for a ~~Eurodollar Term SOFR~~ Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any ~~Base Rate Loan or LIBOR Daily SOFR~~ Rate Loan, the first Business Day ~~after of each month and the end~~ Maturity Date; and (c) as to any ~~Base Rate Loan, the last Business Day~~ of each March, June, September and December and the Maturity Date.

“**Interest Period**” means, ~~(a) as to each Eurodollar Term SOFR Rate Loan, the period commencing on the date such Eurodollar Term SOFR Rate Loan is disbursed or (in the case of any Eurodollar Term SOFR Rate Committed Loan) converted to or continued as a Eurodollar Term SOFR Rate Loan and ending on the date one, three or six months thereafter, as selected by the applicable Borrower in its Committed Loan Notice or Bid Request, as the case may be, and (b) as to each Absolute Rate Loan, a period of not less than 14 days and not more than 180 days as selected by the applicable Borrower in its Bid Request; provided that:~~

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

“**Investment Grade Rating**” means with respect to Holdings, that such Person has a Debt Rating of at least BBB-, Baa3, or BBB- by at least two of S&P, Moody’s, and Fitch, respectively.

“**Investment Properties**” means developed real estate investment properties located in the State of Hawaii or the continental United States and owned in fee by Holdings or its Subsidiaries, but excluding Development Real Properties, Agricultural Land (whether leased to third parties or operated by Holdings or any of its Subsidiaries), Leased Non-Agricultural Land and agriculture-related properties such as hydroelectric facilities and solar equipment.

~~“**IFRS**” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.~~

“**IRS**” means the United States Internal Revenue Service.

“**ISDA Definitions**” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or

any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“**ISP**” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“**Issuer Documents**” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and any Borrower (or any Subsidiary) or in favor the L/C Issuer and relating to such Letter of Credit.

“**Joinder Agreement**” means a joinder agreement substantially in the form of **Exhibit I** executed and delivered in accordance with the provisions of **Section 6.07** or any other documents as the Agent shall reasonably deem appropriate for such purpose.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**L/C Advance**” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“**L/C Issuer**” means, as the context requires, (a) First Hawaiian Bank in its capacity as issuer of Letters of Credit hereunder (including certain Existing Letters of Credit), (b) Bank of America in its capacity as issuer of Letters of Credit hereunder, (c) KeyBank National Association in its capacity as issuer of Letters of Credit hereunder, (d) Wells Fargo Bank, National Association in its capacity as issuer of Letters of Credit hereunder, and (e) any successor issuer of Letters of Credit hereunder (it being understood that any successor L/C Issuer shall have agreed to become an L/C Issuer hereunder). The term “**L/C Issuer**” when used with respect to a Letter of Credit or the L/C Obligations relating to a Letter of Credit shall refer to the L/C Issuer that issued such Letter of Credit.

“**L/C Obligations**” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit *plus* the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.06**. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of **Rule 3.14** of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“**Leased Non-Agricultural Land**” means land owned in fee by Holdings or its Subsidiaries, other than Agricultural Land, located in the State of Hawaii or the continental United States and leased to Third

Parties on arms'-length terms, which land has improvements situated thereon in which none of Holdings or its Subsidiaries has an ownership interest.

"Lender" has the meaning specified in the introductory paragraph hereto.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Company and the Agent.

"Letter of Credit" means any standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder and shall include the Existing Letters of Credit. Notwithstanding anything to the contrary contained herein, a letter of credit issued by an L/C Issuer other than Bank of America shall not be a "Letter of Credit" for purposes of the Loan Documents until such time as the Agent has been notified of the issuance thereof by the applicable L/C Issuer and has confirmed with the L/C Issuer that there exists adequate availability under the Aggregate Commitments to issue such letter of credit.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Commitment" means, with respect to each L/C Issuer, the commitment of such L/C Issuer to issue Letters of Credit hereunder. The initial amount of each L/C Issuer's Letter of Credit Commitment is set forth on *Schedule 2.01A*, or if an L/C Issuer has entered into an Assignment and Assumption or has otherwise assumed a Letter of Credit Commitment after the Closing Date, the amount set forth for such L/C Issuer as its Letter of Credit Commitment in the Register maintained by the Agent. The Letter of Credit Commitment of an L/C Issuer may be modified from time to time by agreement between such L/C Issuer and the Borrowers and notification to the Agent.

"Letter of Credit Expiration Date" means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in *Section 2.03(i)*.

"Letter of Credit Report" means a certificate substantially in the form of *Exhibit H* or any other form approved by the Agent.

"Letter of Credit Sublimit" means an amount equal to the lesser of (a) \$100,000,000 and (b) the Aggregate Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments.

~~**"LIBOR Daily Rate"** means, for any day, a fluctuating rate of interest per annum equal to LIBOR, or a comparable or successor rate, which rate is approved by the Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Agent from time to time), at approximately 11:00 a.m., London time, two Business Days prior to such day, for Dollar deposits with a term of one month commencing that day; provided that if the LIBOR Daily Rate shall be less than zero, then such rate will be deemed zero for purposes of this Agreement.~~

~~**"LIBOR Daily Rate Loan"** means a Loan that bears interest based on the LIBOR Daily Rate.~~

“**Lien**” means any mortgage, deed of trust, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing, any purchase money mortgage, conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of or agreement to give any financing statement (exclusive of filings for precautionary purposes only) under the Uniform Commercial Code of any jurisdiction).

“**Loan**” means an extension of credit by a Lender to a Borrower under **Article II** in the form of a Committed ~~Loan or a Bid~~ Loan.

“**Loan Documents**” means this Agreement, each Note, each Issuer Document, the Guaranty, any additional guaranty provided by an Additional Guarantor pursuant to the terms of **Section 6.07(a)**, any joinder documentation provided by an Additional Borrower pursuant to the terms of **Section 6.07(b)**, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of **Section 2.15** and the Fee Letters.

“**Loan Parties**” means, collectively, each Borrower and each Guarantor.

~~“**London Banking Day**” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.~~

“**Material Adverse Effect**” means (a) a material adverse change in, or a material adverse effect upon, the business, financial condition or operations of Holdings and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document; or (c) a material adverse effect on the rights and remedies of the Lenders taken as a whole, which material adverse effect was not caused by any Lender.

“**Maturity Date**” means (a) if the Initial Maturity Date is not extended to the First Extended Maturity Date pursuant to **Section 2.15**, then the Initial Maturity Date, (b) if the Initial Maturity Date is extended to the First Extended Maturity Date pursuant to **Section 2.15**, then the First Extended Maturity Date, and (c) if the First Extended Maturity Date is extended to the Second Extended Maturity Date pursuant to **Section 2.15**, then the Second Extended Maturity Date; *provided, however*, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“**Minimum Collateral Amount**” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 100% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of **Section 2.16(a)(i)**, **(a)(ii)** or **(a)(iii)**, an amount equal to 100% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount equal to 100% of the stated amount of the applicable Letter of Credit.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor thereto.

“**Multiemployer Plan**” means any Plan which is a “multiemployer plan” (as such term is defined in **Section 4001(a)(3)** of ERISA).

“**Net Operating Income from Investment Properties**” means, for any period of determination thereof for Holdings and its Subsidiaries on a consolidated basis, the consolidated GAAP revenue attributable to all Investment Properties less operating expenses, real property taxes, taxes on gross revenue, common area maintenance expenses, ground and other rents, other rental expenses, and charges for property management related thereto for the most recently ended two fiscal quarters multiplied by

two, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, bad debt expense and charges related to cash-basis tenants, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, straight-line lease adjustments (including amortization of lease incentives), amortization of favorable/unfavorable lease assets/liabilities, or state and federal income taxes.

“Net Operating Income from Leased Non-Agricultural Land” means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated GAAP revenue attributable to all Leased Non-Agricultural Land less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto for the most recently ended two fiscal quarters multiplied by two, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, straight-line lease adjustments (including amortization of lease incentives), amortization of favorable/unfavorable lease assets/liabilities, or state and federal income taxes.

“Net Operating Income from Unencumbered Investment Properties” means, for any period of determination thereof for Holdings and its Subsidiaries on a consolidated basis, the consolidated GAAP revenue attributable to Unencumbered Investment Properties less operating expenses, real property taxes, taxes on gross revenue, common area maintenance expenses, ground and other rents, other rental expenses, and charges for property management related thereto for the most recently ended two fiscal quarters multiplied by two, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, straight-line lease adjustments (including amortization of lease incentives), amortization of favorable/unfavorable lease assets/liabilities, or state and Federal income taxes.

“Net Operating Income from Unencumbered Leased Non-Agricultural Land” means, for any period of determination thereof for Holdings and its Subsidiaries, the consolidated GAAP revenue attributable to all Unencumbered Leased Non-Agricultural Land less operating expenses, real property taxes, taxes on gross revenue, and charges for property management related thereto for the most recently ended two fiscal quarters multiplied by two, but in no event shall take into account tenant deposits, refunds of tenant deposits, tenant improvements paid for by Holdings or its Subsidiaries, reimbursement by tenants to Holdings or its Subsidiaries for tenant improvements paid for by Holdings or its Subsidiaries, allowances for bad debts, gains or losses from the sales of leased property, depreciation and amortization, overhead allocations that are not directly associated with the property, straight-line lease adjustments (including amortization of lease incentives), amortization of favorable/unfavorable lease assets/liabilities, or state and federal income taxes.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of **Section 10.01** and (ii) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Non-Recourse Debt” means, with respect to any Loan Party or Subsidiary, any (a) Debt that is not Recourse Debt, and (b) fully recourse mortgage and similar financings obtained by a Subsidiary of a Borrower or any Series if the mortgaged real property constitutes substantially all of the assets of such Subsidiary and such financings are not Guaranteed by any Loan Party (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, and other similar exceptions to recourse liability); *provided* that solely with respect to the definition of Principal Credit Facility and **Section 7.08**, Non-Recourse Debt shall also include loans and credit facilities at all times during which the recourse portion of such loans and credit facilities (including commitments in respect thereof) is not in excess of \$40,000,000.

“Note” means a promissory note made by the Borrowers in favor of a Lender evidencing Loans made by such Lender, substantially in the form of **Exhibit C**.

“Note Purchase Agreement” means each of (i) that certain Second Amended and Restated Note Purchase and Private Shelf Agreement dated as of December 10, 2015, among Holdings, the Company, the guarantors party thereto and the noteholders party thereto, as amended as of the date hereof and as such agreement may be further amended, restated, modified or supplemented from time to time in accordance with the terms hereof, and (ii) that certain Note Purchase and Private Shelf Agreement dated as of December 20, 2017, among Holdings, the Company, the guarantors party thereto and the noteholders party thereto, as amended as of the date hereof and as such agreement may be further amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

“Notice Date” has the meaning set forth in **Section 2.03(c)(i)**.

“Notice of Additional L/C Issuer” means a certificate substantially the form of **Exhibit L** or any other form approved by the Agent.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of **Exhibit G** or such other form as may be approved by the Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising under any Loan Document and including interest and fees that accrue after the commencement by or against any Borrower or any Subsidiary or Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; *provided* that all references to **“Obligations”** with respect to a Guarantor shall, in addition to the foregoing, include all present and future Swap Obligations now or hereafter arising from, by virtue of, or pursuant to any Swap Contract that relates solely to the Obligations owed to any Person who was the Agent, a Lender or an Affiliate of the Agent or a Lender at the time such Swap Contract was entered into; *provided, further*, that the **“Obligations”** with respect to any Guarantor shall exclude any Excluded Swap Obligations of such Guarantor.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

~~“**Other Rate Early Opt-in**” means the Agent and the Borrowers have elected to replace LIBOR with a Benchmark Replacement other than a SOFR-based rate pursuant to (a) an Early Opt-in Election and (b) Section 3.03(e)(ii) and clause (b) of the definition of Benchmark Replacement.~~

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 3.06**).

“**Outstanding Amount**” means (a) with respect to Committed Loans ~~and Bid Loans~~ on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Loans ~~and Bid Loans, as the case may be~~, occurring on such date; and (b) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the applicable Borrower of Unreimbursed Amounts.

“**Participant**” has the meaning specified in **Section 10.06(d)**.

“**Participant Register**” has the meaning specified in **Section 10.06(d)**.

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Permitted Assets**” means (a) where any Property Sub or any assets of a Property Sub or of a Borrower have been sold or otherwise transferred, assets, including real estate, to be used by any Borrower or any Property Sub in conducting Property Development Activities, the Property Management Business or the agribusiness and (b) in all other instances, assets, including real estate, to be used in conducting Property Development Activities, the Property Management Business, the agribusiness.

“**Permitted Debt**” means (a) any Unsecured Debt of a Borrower or a Subsidiary (exclusive of Debt owed to a Borrower or a Subsidiary) as selected by the Borrowers, so long as the aggregate amount of all proceeds from sales or other dispositions which are made after the Closing Date pursuant to **clauses (d) or (e) of Section 7.04** and that are applied to the prepayment of such Unsecured Debt pursuant to this **clause (a)**, do not exceed \$150,000,000 and (b) after the \$150,000,000 basket in **clause (a)** has been fully utilized, all Unsecured Debt of the Borrowers and Subsidiaries (exclusive of any Debt owed to a Borrower or a Subsidiary) on a *pro rata* basis.

“**Person**” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity (or any series of an entity).

“**Plan**” means any “*employee pension benefit plan*” (as such term is defined in *Section 3* of ERISA) which is or has been established or maintained, or to which contributions are or have been made, by any Borrower or any ERISA Affiliate.

“**Platform**” has the meaning specified in *Section 6.01*.

~~“**Public Lender**” has the meaning specified in *Section 6.01*.~~

“**Principal Credit Facility**” means (a) the Note Purchase Agreement or (b) any other credit agreement, loan agreement, note purchase agreement or similar agreement under which credit facilities in the aggregate principal or commitment amount of at least \$40,000,000 are provided for, in each case, as any of the same may be amended, restated, supplemented or otherwise modified from time to time; *provided* that the immediately preceding *clause (b)* shall exclude (i) all purchase money debt, (ii) all construction and other project financings, and (iii) all Non-Recourse Debt.

“**Property Development Activities**” means land acquisition and development activities, the principal objective of which is to acquire and develop real property for sale or other disposition.

“**Property Management Business**” means the managing, leasing, selling and purchasing of real property.

“**Property Sub**” means any Subsidiary that exists on the Closing Date or that is subsequently formed or acquired and, in each case, whose principal business activities are to engage in Property Development Activities.

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

~~“**Public Lender**” has the meaning specified in *Section 6.01*.~~

“**Ratings-Based Applicable Rate**” has the meaning specified in the definition of “**Applicable Rate**.”

“**Recipient**” means the Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“**Recourse Debt**” means, with respect to any Loan Party or Subsidiary, any Debt, in respect of which contractual recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, and other similar exceptions to recourse liability) is to such Person.

“**Register**” has the meaning specified in *Section 10.06(c)*.

“**REIT**” means a “*real estate investment trust*” as defined in *Sections 856* through *860* of the Code.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

~~“**Relevant Governmental Body**” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of~~

~~Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.~~

“Remittance Instructions” means the instructions substantially in the form of *Exhibit J*.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Committed Loans, a Committed Loan Notice, and (b) with respect to an L/C Credit Extension, a Letter of Credit Application, ~~and (c) with respect to a Bid Loan, a Bid Request.~~

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to *Section 8.02*, Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations ~~(but specifically excluding Bid Loans)~~ being deemed “held” by such Lender for purposes of this definition); *provided* that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders (except that Unreimbursed Amounts that such Defaulting Lender has failed to fund that has not been reallocated to and funded by another Lender shall be deemed to be “held” by the Lender that is the L/C Issuer in making such determination).

“Rescindable Amount” has the meaning specified in *Section 2.12(b)(ii)*.

“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” means (a) each of the chief executive officer, president, treasurer, chief financial officer, principal accounting officer, controller and chief legal officer of the applicable Loan Party and, in the case of the Company, each authorized signatory of the Company, (b) solely for purposes of delivery of certificates of the type referred to in *Section 4.01(a)(iv)*, the secretary or any assistant secretary of the applicable Loan Party, (c) solely for purposes of notices given pursuant to *Article II*, any other officer or employee of such Borrower so designated by any of the foregoing officers in a notice to the Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Agent and (d) any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between such Loan Party and the Agent. Any document delivered hereunder that is signed by a Responsible Officer of such Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payments” has the meaning specified in *Section 7.09*.

“S&P” means S&P Global Ratings, a subsidiary of S&P Global, Inc., and any successor thereto.

“Sanction(s)” means any sanction administered or enforced by the United States Government, including OFAC, the United Nations Security Council, the European Union or ~~Her~~His Majesty’s Treasury (“*HMT*”).

“Sanctioned Persons” has the meaning specified in *Section 5.16*.

“**SEC**” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“**Second Extended Maturity Date**” means August 27, 2026.

“**Secured Debt**” means at any time of determination, the consolidated Debt of Holdings and its Subsidiaries that is not Unsecured Debt.

“**Secured Debt to Total Adjusted Asset Value Ratio**” means at any time of determination, the ratio of (a) all Secured Debt of Holdings and its Subsidiaries on a consolidated basis as of such time to (b) Total Adjusted Asset Value as of such time.

“**Series**” means any “series” of the Company established pursuant to *Section 18-215* of the Delaware Limited Liability Company Act.

“**Significant Acquisition**” means the acquisition of one or more real property assets or portfolios of such assets or operating businesses in a single transaction or series of related transactions for a purchase price of not less than 10% of Total Adjusted Asset Value.

“**Significant Line of Business**” means a line of business or an operating division, the book value of which is, on the date of determination, equal to 5% or more of Consolidated Shareholders’ Equity.

“**Significant Subsidiary**” means any direct or indirect Subsidiary of Holdings (other than a Borrower), the net worth of which is, on the date of determination, 5% or more of Consolidated Shareholders’ Equity.

~~“**SOFR-Early Opt-in**” means the Agent and the Borrowers have elected to replace LIBOR pursuant to (1) an Early Opt-in Election and (2) **Section 3.03(c)(i)** and **clause (a)** of the definition of Benchmark Replacement”~~ means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).

“**SOFR Adjustment**” means 0.10% (10 basis points).

“**Specified Loan Party**” means any Loan Party that is not an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to **Section 11.09**).

“**Subsidiary**” means, as to any Person, any company, whether operating as a corporation, joint venture, partnership, limited liability company or other entity (or series of another entity), which is consolidated with such Person in accordance with GAAP. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Holdings.

“**Successor Rate**” has the meaning specified in **Section 3.03(b)**.

“**Swap Contract**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar

transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Swap Obligations*” means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*Term SOFR*” means, ~~for the applicable corresponding tenor (or if any Available Tenor of a Benchmark does not correspond to an Available Tenor for the applicable Benchmark Replacement, the closest corresponding Available Tenor and if such Available Tenor corresponds equally to two Available Tenors of the applicable Benchmark Replacement, the corresponding tenor of the shorter duration shall be applied), the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body;~~

(a) for any Interest Period with respect to a Term SOFR Rate Loan, the rate *per annum* equal to the Term SOFR Screen Rate two (2) U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. Eastern Time on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, *plus* the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate *per annum* equal to the Term SOFR Screen Rate with a term of one (1) month commencing that day;

provided that if Term SOFR determined in accordance with either of the foregoing *clauses (a) or (b)* of this definition would otherwise be less than zero (0), Term SOFR shall be deemed zero (0) for purposes of this Agreement.

“*Term SOFR Rate Committed Loan*” means a Committed Loan made hereunder with respect to which the interest rate is calculated by reference to *clause (a)* of the definition of Term SOFR.

“*Term SOFR Rate Loan*” means a Term SOFR Rate Committed Loan.

“*Term SOFR Replacement Date*” has the meaning specified in *Section 3.03(b)*.

“*Term SOFR Screen Rate*” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to the Agent) and published on the applicable Reuters *screen*

page (or such other commercially available source providing such quotations as may be designated by the Agent from time to time).

“**Third Party**” means any Person other than Holdings and its Subsidiaries.

“**Total Adjusted Asset Value**” means, at any date of determination thereof, without duplication, (a) cash and cash equivalents of Holdings and its Subsidiaries, plus (b) Net Operating Income from Investment Properties divided by the Applicable Cap Rates, plus (c) Net Operating Income from Leased Non-Agricultural Land divided by the Applicable Cap Rates, plus (d) the book value (net of impairments) of Agricultural Land, plus (e) the book value (net of impairments) of Development Real Properties owned by Holdings or any of its Subsidiaries, or by any other entity (other than a Subsidiary) in which Holdings or any of its Subsidiaries owns an Equity Interest (an “**Unconsolidated Joint Venture Entity**”), to be included in the determination of “**Total Adjusted Asset Value**” in an amount (i) in the case of Development Real Properties owned by Holdings or any of its Subsidiaries, equal to such book value (provided that with respect to any Subsidiary of the Company (or any Series thereof) that is not wholly-owned, directly or indirectly, by the Company (or any Series thereof) (a “**Consolidated Joint Venture Entity**”), such book value shall be decreased by an amount equal to the noncontrolling interest in such Consolidated Joint Venture Entity as reflected on the most recent consolidated balance sheet of Holdings required to be delivered pursuant to the facility documentation), and (ii) in the case of Development Real Properties owned by an Unconsolidated Joint Venture Entity, equal to the book value (net of impairments) of Holdings’ direct or indirect investment in such Unconsolidated Joint Venture Entity, provided that the aggregate amount under this *clause (e)* shall not contribute more than 30% of Total Adjusted Asset Value plus (f) the value of the business of Grace Holdings and its Subsidiaries (which, (I) during the period from August 31, 2021 through and including February 28, 2023 shall be deemed to be equal to the book value (net of impairments) of the assets of Grace Holdings and its Subsidiaries, and (II) at all times after such period shall be deemed to be equal to EBITDA (but calculated solely with respect to Grace Holdings and its Subsidiaries for the then or most recently ended period of four consecutive fiscal quarters) divided by 16.67%), *provided*, that Grace Holdings and its Subsidiaries shall not contribute more than 20% of Total Adjusted Asset Value, plus (g) the book value (net of impairments) of all watershed land, conservation land and pasture land of Holdings and its Subsidiaries not included in *clauses (a) through (f)* above, plus (h) the book value (net of impairments) of all assets of Holdings and its Subsidiaries not included in *clauses (a) through (g)* above, provided that (I) the aggregate book value of such other assets shall be included in the determination of Total Adjusted Asset Value only to the extent it comprises 10% or less of the Total Adjusted Asset Value, and (II) the portion of Total Adjusted Asset Value derived from *clauses (d) through (h)* of this definition shall not exceed 25% of the total amount of the Total Adjusted Asset Value.

Notwithstanding anything to the contrary in the foregoing portions of this definition or **Section 1.02(e)**, any asset or Person (together with such Person’s Subsidiaries) acquired by Holdings or any of its Subsidiaries, for purpose of determining the “**Total Adjusted Asset Value**,” shall be valued at net book value (net of impairments) during the period from the consummation of such acquisition until the last day of the first four full fiscal quarters occurring after the consummation of such acquisition.

“**Total Debt to Total Adjusted Asset Value Ratio**” means, as at any time of determination thereof, the ratio of (a) all Debt of Holdings and its Subsidiaries on a consolidated basis as of such time to (b) Total Adjusted Asset Value as of such time.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“**Triggering Event**” means Holdings’ and its Subsidiaries’ defeasance of some or all of their Plans on or before December 31, 2022.

“**Type**” means, ~~(a) with respect to a Committed Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan and (b) with respect to a Bid Loan, its character as an Absolute, a Term SOFR Rate Loan or a Eurodollar Margin Bid~~ Daily SOFR Rate Loan.

“**UCP**” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“**ICC**”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“**UK Financial Institution**” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“**UK Resolution Authority**” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“**Unconsolidated Joint Venture Entity**” has the meaning specified in the definition of “**Total Adjusted Asset Value**”.

“**Undeveloped Land**” means (a) land owned in fee by any Borrower or any Subsidiary as of December 31, 2020 which at the time of determination has not been developed for commercial or residential purposes, (b) land acquired by any Borrower or any Subsidiary subsequent to December 31, 2020 pursuant to a Code Section 1031 like-kind exchange (in exchange for land described in *clause (a)* or *(b)* of this definition) which at the time of determination has not been developed for commercial or residential purposes, or (c) capital stock or other Equity Interests of a Subsidiary which owns as its principal asset, directly or indirectly, Undeveloped Land described in *clause (a)* or *(b)* of this definition.

“**Unencumbered Agricultural Division Assets**” means assets of the agricultural division of Holdings and its Subsidiaries which: (i) are not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, and (b) Liens incidental to the conduct of the owner of such asset’s business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable asset, or materially impair the use thereof; (ii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such asset, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or Equity Interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of Unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such asset, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or Equity Interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or Equity Interests upon the occurrence of any contingency (including pursuant to an “equal and ratable” clause). No such asset owned by a Subsidiary of Holdings shall be

deemed to be an Unencumbered Agricultural Division Asset unless (1) both such asset and all Equity Interests of the Subsidiary which holds legal title to such asset is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in **Section 8.01(f)** or **8.01(g)** (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“Unencumbered EBITDA” means, for any period, with respect to Holdings and its Subsidiaries on a consolidated basis, without duplication, EBITDA derived from (a) Unencumbered Investment Properties, (b) Unencumbered Leased Agricultural Land, (c) EBITDA generated from development real properties and agricultural land but only to the extent such assets are Unencumbered Agricultural Division Assets, (d) EBITDA calculated solely with respect to Grace Holdings and its Subsidiaries so long as no Debt of Grace Holdings or its Subsidiaries is or was secured by a consensual Lien during such period, and (e) other EBITDA generated from any other unencumbered assets of Holdings and its Subsidiaries.

“Unencumbered Income Producing Assets Value” means, at any time of determination thereof, without duplication, the sum of (a) Unrestricted Cash, plus (b) the Net Operating Income from Unencumbered Investment Properties divided by the Applicable Cap Rates, plus (c) the Net Operating Income from Unencumbered Leased Non-Agricultural Land divided by the Applicable Cap Rate, plus (d) the book value (net of impairments) of Agricultural Land, plus (e) value of the business of Grace Holdings and its Subsidiaries (which, (I) during the period from August 31, 2021 through and including February 28, 2023 shall be deemed to be equal to the book value (net of impairments) of the assets of Grace Holdings and its Subsidiaries, and (II) at all times after such period shall be deemed to be equal to EBITDA (but calculated solely with respect to Grace Holdings and its Subsidiaries for the then or most recently ended period of four consecutive fiscal quarters) divided by 16.67%), *provided* that the book value of any individually encumbered assets shall be excluded from the calculation of Unencumbered Income Producing Assets Value if, at such time of determination or at any time during such then or most recently ended period of four consecutive fiscal quarters, any Debt of Grace Holdings or its Subsidiaries is or was secured by a consensual Lien and provided further that Grace Holdings and its Subsidiaries shall not contribute more than 20% of Unencumbered Income Producing Assets Value, plus (f) the net book value (i.e., the book value net of liabilities, whether secured or unsecured) of Development Real Properties owned by Holdings or any of its Subsidiaries to be included in the determination of “Unencumbered Income Producing Assets Value” in an amount in the case of Development Real Properties owned by Holdings or any of its Subsidiaries, equal to such net book value (*provided* that with respect to any Consolidated Joint Venture Entity, such book value shall be decreased by an amount equal to the noncontrolling interest in such Consolidated Joint Venture Entity as reflected on the most recent consolidated balance sheet of Holdings required to be delivered pursuant to the facility documentation), provided that the aggregate of the net book value of the assets described in this **clause (f)** shall be included in the determination of Unencumbered Income Producing Assets Value only to the extent it comprises 15% or less of the Unencumbered Income Producing Assets Value, plus (g) the book value of notes receivable held directly by Holdings or its Subsidiaries from Persons other than Holdings or any of its Subsidiaries, and the book value of mezzanine equity investments held directly by Holdings or its Subsidiaries in other Persons (but without duplication of the immediately preceding **clause (f)**), *provided* that the aggregate book value of such notes receivable and mezzanine investments shall be included in the determination of Unencumbered Income Producing Assets Value only to the extent it comprises 5% or less of the Unencumbered Income Producing Assets Value, provided further that the aggregate of the net book value and the book value (as applicable) of the assets described in the immediately preceding **clauses (f)** and **(g)** shall be included in the determination of Unencumbered Income Producing Assets Value only to the extent it comprises 15% or less of the Unencumbered Income Producing Assets Value, plus (h) the book value (net of impairments) of all unencumbered watershed land, conservation land and pasture land of Holdings and its Subsidiaries not included in **clauses (a)** through **(g)** above, plus (i) the

book value (net of impairments) of all other unencumbered assets of Holdings and its Subsidiaries not included in *clauses (a) through (h)* above, provided that (I) the aggregate book value of such other unencumbered assets shall be included in the determination of Unencumbered Income Producing Assets Value only to the extent it comprises 10% or less of the Unencumbered Income Producing Assets Value, and (II) the portion of Unencumbered Income Producing Assets Value derived from *clauses (d) through (i)* of this definition shall not exceed 25% of the total amount of the Unencumbered Income Producing Assets Value.

Notwithstanding anything to the contrary in the foregoing portions of this definition or in *Section 1.02(e)*, any asset or Person (together with such Person's Subsidiaries) acquired by Holdings or any of its Subsidiaries, for purpose of determining the "*Unencumbered Income Producing Asset Value*," shall be valued at net book value (net of impairments) during the period from the consummation of such acquisition until the last day of the first four full fiscal quarters occurring after the consummation of such acquisition.

"*Unencumbered Interest Coverage Ratio*" means, as of any date of determination, the ratio of (a) Unencumbered EBITDA to (b) Unencumbered Interest Expense, in each case for the period of four consecutive fiscal quarters ending on or immediately prior to such date

"*Unencumbered Interest Expense*" means, as of any period of determination, with respect to Holdings and its Subsidiaries on a consolidated basis, the portion of Consolidated Interest Expense attributable to Unsecured Debt.

"*Unencumbered Investment Properties*" means Investment Properties which (i) are not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, and (b) Liens incidental to the conduct of the owner of such property's business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof; (ii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such project, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or Equity Interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of Unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) are not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such project, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or Equity Interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or Equity Interests upon the occurrence of any contingency (including pursuant to an "equal and ratable" clause). No such Investment Property owned by a Subsidiary of Holdings shall be deemed to be an Unencumbered Investment Property unless (1) both such project and all Equity Interests of the Subsidiary which holds legal title to such project is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in *Section 8.01(f)* or *8.01(g)* (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

"*Unencumbered Leased Agricultural Land*" means Agricultural Land which is leased to third parties on arms'-length terms and which: (i) is not subject to a mortgage or any other Lien, other than (a)

Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (b) Liens incidental to the conduct of the owner of such property's business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof, and (c) arms'-length operating leases with third-party lessees; (ii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or Equity Interests of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of Unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or Equity Interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or Equity Interests upon the occurrence of any contingency (including pursuant to an "equal and ratable" clause). No such land owned by a Subsidiary of Holdings shall be deemed to be Unencumbered Leased Agricultural Land unless (1) both such land and all Equity Interests of the Subsidiary which holds legal title to such land is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in **Section 8.01(f)** or **8.01(g)** (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

"Unencumbered Leased Non-Agricultural Land" means Leased Non-Agricultural Land which: (i) is not subject to a mortgage or any other Lien, other than (a) Liens for taxes not yet due or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (b) Liens incidental to the conduct of the owner of such property's business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance, extension or renewal of the same, and which do not in the aggregate materially detract from the value of the applicable property, or materially impair the use thereof, and (c) arms'-length operating leases with third-party lessees; (ii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that prohibits or limits the ability of Holdings or any Subsidiary, as the case may be, to create, incur, assume or suffer to exist any Lien upon any assets or Equity Interest of Holdings, or any Subsidiary except for covenants that are not materially more restrictive than the covenants contained in this Agreement, in favor of holders of Unsecured Debt of Holdings and its Subsidiaries not prohibited hereunder; and (iii) is not subject to any agreement (including (x) any agreement governing Debt incurred in order to finance or refinance the acquisition of such land, and (y) if applicable, the organizational documents of Holdings or any Subsidiary) that entitles any Person to the benefit of any Lien on any assets or Equity Interests of Holdings or any Subsidiary or would entitle any Person to the benefit of any Lien on such assets or Equity Interests upon the occurrence of any contingency (including pursuant to an "equal and ratable" clause). No such land owned by a Subsidiary of Holdings shall be deemed to be Unencumbered Leased Non-Agricultural Land unless (1) both such land and all Equity Interests of the Subsidiary which holds legal title to such land is not subject to any Lien, (2) each intervening entity between Holdings and such Subsidiary does not have any Debt for borrowed money, and (3) no event has occurred or condition exists described in **Section 8.01(f)** or **8.01(g)** (assuming that such provisions applied to such Subsidiary) with respect to such Subsidiary.

“**United States**” and “**U.S.**” mean the United States of America.

“**Unreimbursed Amount**” has the meaning specified in **Section 2.03(c)(i)**.

“**Unrestricted Cash**” means an amount equal to (a) cash and cash equivalents of Holdings and its Subsidiaries that are not subject to pledge, Lien or control agreement (excluding statutory Liens in favor of any depository bank where such cash is maintained), minus (b) amounts included in the foregoing **clause (a)** that are with an entity other than Holdings or its Subsidiaries as deposits or security for contractual obligations.

“**Unsecured Debt**” means, at any time of determination thereof, the consolidated Debt of Holdings and its Subsidiaries not secured by any Lien.

“**Unsecured Debt to Unencumbered Income Producing Assets Value Ratio**” means, at any time of determination thereof, the ratio of (a) Unsecured Debt to (b) Unencumbered Income Producing Assets Value.

“**U.S. Government Securities Business Day**” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“**U.S. Person**” means any Person that is a “United States person” as defined in **Section 7701(a)(30)** of the Code.

“**U.S. Tax Compliance Certificate**” has the meaning specified in **Section 3.01(e)(ii)(B)(3)**.

“**Voting Stock**” means any shares of stock (or comparable equity securities) whose holders are entitled under ordinary circumstances to vote for the election of directors (or comparable persons), irrespective of whether at the time stock (or comparable equity securities) of any other class or classes shall have or might have voting power by reason of the happening of any contingency.

“**Withholding Agent**” means the Borrowers, any Loan Party and the Agent.

“**Write-Down and Conversion Powers**” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02 Other Interpretive Provisions

. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any articles of incorporation, bylaws or similar organizational documents) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “*from*” means “from and including;” the words “*to*” and “*until*” each mean “to but excluding;” and the word “*through*” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) All covenants hereunder shall be given independent effect so that if a particular action or condition is prohibited by any one of such covenants, the fact that it would be permitted by an exception to, or otherwise be in compliance within the limitations of, another covenant shall not (i) avoid the occurrence of a Default if such action is taken or such condition exists or (ii) in any way prejudice an attempt by the Agent to prohibit, through equitable action or otherwise the taking of any action by any Borrower or any Subsidiary that would result in a Default. For the avoidance of doubt, if a particular action or condition is expressly permitted by an exception to a covenant and is not expressly prohibited by another provision in the same covenant, the taking of such action or the existence of such condition shall not result in a Default under such covenant.

(e) For purposes of all calculations made under the financial covenants set forth in **Section 7.01** for an applicable period, (i) if during such period Holdings or any Subsidiary shall have consummated an acquisition of a Significant Subsidiary or a Significant Line of Business, (x) EBITDA or Unencumbered EBITDA, as the case may be, for such period shall be calculated after giving *pro forma* effect thereto as if such transaction occurred on the first day of such period; *provided* that if the aggregate purchase price for any such acquisition is greater than or equal to \$25,000,000, EBITDA or Unencumbered EBITDA, as the case may be, shall only be calculated on a *pro forma* basis to the extent such *pro forma* calculations are based on audited financial statements or other financial statements reasonably satisfactory to the Required Lenders

(subject to adjustments set forth in the second paragraphs of each of the definitions of Total Adjusted Asset Value and Unencumbered Income Producing Assets Value, as applicable) and (y) any Debt incurred or assumed by any Loan Party or Subsidiary (including the Person or property acquired) in connection with such transaction and any Debt of the Person or property acquired which is not retired in connection with such transaction (1) shall be deemed to have been incurred as of the last day of the previous period and (2) if such Debt has a floating or formula rate, shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate which is or would be in effect with respect to such Debt as at the relevant date of determination, and (ii) if during such period Holdings or any Subsidiary shall have consummated a disposition of all or substantially all of the assets of Holdings or a Subsidiary or of a majority of the Equity Interests of a Subsidiary or of a Significant Line of Business, (x) EBITDA or Unencumbered EBITDA, as the case may be, for such period shall be calculated after giving *pro forma* effect thereto as if such transaction occurred on the last day of the previous period and (y) any Debt which is retired in connection with such transaction shall be excluded and deemed to have been retired as of the last day of the previous period.

1.03 Accounting Terms.

(a) **Generally.** All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, as in effect from time to time, *except* as otherwise specifically prescribed herein.

(b) **Changes in GAAP.** If at any time any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrowers or the Required Lenders shall so request, the Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided* that, (A) until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) until so amended, the Borrowers shall provide to the Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested by the Agent hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases shall continue to be classified and accounted for on a basis consistent with GAAP in effect and adopted by the Borrowers as of the Closing Date, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

1.04 Rounding

. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day

. Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable). ~~The Agent does not warrant, nor accept responsibility, nor shall the~~

~~Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or “LIBOR Daily Rate” or with respect to any rate that is an alternative or replacement for or successor to any of such rate (including, any Benchmark Replacement) or the effect of any of the foregoing, or of any Benchmark Replacement Conforming Changes.~~

1.06 Letter of Credit Amounts

. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

1.07 Interest Rates

~~. The Agent does not warrant, nor accept responsibility, nor shall the Agent have any liability with respect to the administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrowers. The Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.~~

II. THE COMMITMENTS AND CREDIT EXTENSIONS.

2.01 Committed Loans

. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “**Committed Loan**”) to the Borrowers from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Commitment; *provided, however*, that after giving effect to any Committed Borrowing, (a) the Total Outstandings shall not exceed the Aggregate Commitments, and (b) the aggregate Outstanding Amount of the Committed Loans of any Lender, plus such Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations, shall not exceed the amount of such Lender’s Commitment. Subject to the terms and conditions hereof, each Borrower may borrow Committed Loans under this **Section 2.01**, repay or prepay under **Section 2.05** such Committed Loans, reborrow such Committed Loans and borrow other Committed Loans under this **Section 2.01**. Committed Loans may be ~~Base Rate Loans, Eurodollar~~ either Term SOFR Rate Committed Loans or ~~LIBOR-Daily~~ SOFR Rate Loans, except as further provided herein.

2.02 Borrowings, Conversions and Continuations of Committed Loans.

(a) Each Committed Borrowing, each conversion of Committed Loans from one Type to the other, and each continuation of ~~Eurodollar~~Term SOFR Rate Committed Loans shall be made upon the applicable Borrower's irrevocable notice to the Agent, which may be given by: (A) telephone or (B) a Committed Loan Notice; *provided* that any telephonic notice must be confirmed immediately by delivery to the Agent of a Committed Loan Notice. Each such notice must be received by the Agent not later than (i) 12:00 noon three Business Days prior to the requested date of any Borrowing of ~~Eurodollar~~Term SOFR Rate Committed Loans, of any conversion to or continuation of ~~Eurodollar~~Term SOFR Rate Committed Loans or of any conversion of ~~Eurodollar~~Term SOFR Rate Committed Loans to ~~LIBOR~~Daily SOFR Rate Loans or Base Rate Loans; (ii) 12:00 noon one Business Day prior to the requested date of any Borrowing of or conversion to Base Rate Loans (other than any conversion of ~~Eurodollar~~Term SOFR Rate Committed Loans to Base Rate Loans); and (iii) 11:00 a.m. ~~(Central time)~~ on the Business Day of the requested Borrowing of or conversion to ~~LIBOR~~Daily SOFR Rate Loans (other than any conversion of ~~Eurodollar~~Term SOFR Rate Committed Loans to ~~LIBOR~~Daily SOFR Rate Loans). Each Borrowing of, conversion to or continuation of ~~Eurodollar~~Term SOFR Rate Committed Loans or ~~LIBOR~~Daily SOFR Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof. Unless otherwise specified herein, no conversion from Term SOFR Rate Loans may be made other than at the end of the corresponding Interest Period. Except as provided in ~~Sections~~Section 2.03(c) and 2.04(e), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the applicable Borrower is requesting a Committed Borrowing, a conversion of Committed Loans from one Type to the other, or a continuation of ~~Eurodollar~~Term SOFR Rate Committed Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Committed Loans to be borrowed, converted or continued, (iv) the Type of Committed Loans to be borrowed or to which existing Committed Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the applicable Borrower fails to specify a Type of Committed Loan in a Committed Loan Notice or if such Borrower fails to give a timely notice requesting a conversion or continuation of a ~~Eurodollar~~Term SOFR Rate Committed Loan, then the applicable Committed Loan shall be made as, or converted to, ~~Base~~Daily SOFR Rate Loans, unless such Committed Loan was a ~~Eurodollar~~Term SOFR Rate Committed Loan, in which case such Committed Loan shall be continued as a ~~Eurodollar~~Term SOFR Rate Committed Loan with an Interest Period of one (1) month. Any such automatic conversion to a ~~Base~~Daily SOFR Rate Loan and any such continuation of a ~~Eurodollar~~Term SOFR Rate Committed Loan, in either case, shall be effective as of the last day of the Interest Period then in effect with respect to the applicable ~~Eurodollar~~Term SOFR Rate Committed Loans. If the applicable Borrower requests a Borrowing of, conversion to, or continuation of ~~Eurodollar~~Term SOFR Rate Committed Loans in any such Committed Loan Notice, but such Borrower fails to specify an Interest Period for such Committed Loan or continuation of a ~~Eurodollar~~Term SOFR Rate Committed Loan, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Committed Loan Notice, the Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by the applicable Borrower, the Agent shall notify each Lender of the details of any automatic conversion to ~~Base~~Daily SOFR Rate Loans or continuation of ~~Eurodollar~~Term SOFR Rate Committed Loans described in the preceding subsection. In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to the Agent in immediately available funds at the Agent's

Office on the Business Day specified in the applicable Committed Loan Notice not later than ~~(x) for any Committed Loan other than LIBOR Daily Rate Loans, 11:00 a.m. and (y) for any LIBOR Daily Rate Loans, 12:00 noon (Central time)~~ 1:00 p.m. Upon satisfaction of the applicable conditions set forth in **Section 4.02** (and, if such Borrowing is the initial Credit Extension, **Section 4.01**), the Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Agent either by (i) crediting the account of such Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Agent by such Borrower; *provided, however*, that if, on the date the Committed Loan Notice with respect to such Borrowing is given by such Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to such Borrower as provided above.

~~(e) — Except as otherwise provided herein, a Eurodollar Rate Committed Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Committed Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Committed Loans or LIBOR Daily Rate Loans without the consent of the Required Lenders.~~

~~(c)~~ ~~(d)~~ The Agent shall promptly notify the applicable Borrower and the Lenders of the interest rate applicable to any Interest Period for ~~Eurodollar~~ Term SOFR Rate Committed Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Agent shall notify the applicable Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(d) Without limitation of any other conditions herein, a Borrowing or continuation of, or conversion to, Term SOFR Rate Committed Loans shall not be permitted if:

(i) an Event of Default or a Default has occurred and is continuing and has not been waived by Required Lenders or all Lenders, as applicable;

(ii) ~~(e)~~ After giving effect to the requested Borrowing or continuation of, or conversion to Term SOFR Rate Committed Loans, the sum of all Committed Borrowings would exceed the Aggregate Commitments;

(iii) the requested Borrowing or continuation of or conversion to Term SOFR Rate Committed Loans would cause more than ten (10) Interest Periods to be in effect at any one (1) time for Term SOFR Rate Committed Loans, after giving effect to all Term SOFR Rate Committed Loans, all conversions of Committed Loans from one (1) Type to ~~the other~~ another, and all continuations of Committed Loans as the same Type, ~~there shall not be more than ten Interest Periods in effect at any single time with respect to Eurodollar Rate Loans;~~

(iv) the requested interest period does not conform to the definition of Interest Period herein; or

(v) any of the circumstances referred to in **Section 3.03** shall apply with respect to the requested Borrowing or continuation of or conversion to Term SOFR Rate Committed Loans.

(e) Borrowers may not request a Borrowing of, or conversion to, Base Rate Loans unless Daily Simple SOFR Loans and Term SOFR Rate Committed Loans are unavailable, as further provided herein.

(f) With respect to Term SOFR and Daily Simple SOFR, the Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Agent shall post each such amendment implementing such Conforming Changes to Borrowers and the Lenders reasonably promptly after such amendment becomes effective.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this **Section 2.03**, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of the Borrowers or any of their Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with **subsection (b)** below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of any Borrower or its Subsidiaries and any drawings thereunder; *provided* that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) the aggregate amount of the outstanding Letters of Credit issued by any L/C Issuer shall not exceed its Letter of Credit Commitment, (x) the Total Outstandings shall not exceed the Aggregate Commitments, (y) the aggregate Outstanding Amount of the Committed Loans of any Lender, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, shall not exceed such Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by the applicable Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly any Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to **Section 2.03(b)(iii)**, the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date; *provided* that Letters of Credit with an expiry date after the

Letter of Credit Expiration Date may be issued (but the L/C Issuer shall have no obligation to issue) so long as the Borrowers Cash Collateralize such Letter of Credit in accordance with the terms of this Agreement pursuant to this **clause (B)**. Each Borrower hereby agrees that on or before the Letter of Credit Expiration Date it shall Cash Collateralize any Letter of Credit existing and not expiring on the Letter of Credit Expiration Date in an amount equal to at least 100% of the face amount of such Letter of Credit (and in the event such Borrower fails to do so, the Agent may require each Lender to fund its participation interest in an amount equal to such Lender's Applicable Percentage of the outstanding Letters of Credit for purposes of Cash Collateralizing the Letters of Credit). For the avoidance of doubt, the parties hereto agree that the obligations of the Lenders hereunder to reimburse the L/C Issuer for any Unreimbursed Amount with respect to any Letter of Credit shall terminate on the Maturity Date with respect to drawings occurring after that date.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) such Letter of Credit is to be denominated in a currency other than Dollars; or

(D) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the applicable Borrower or such Defaulting Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to **Section 2.17(a)(iv)**) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in *Article IX* with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “Agent” as used in *Article IX* included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the applicable Borrower delivered to the L/C Issuer (with a copy to the Agent) in the form of a Letter of Credit Application, appropriately completed and signed by ~~an~~ Responsible Officer of such Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Agent not later than 11:00 a.m. at least three Business Days (or such later date and time as the Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the stated amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the applicable Borrower shall furnish to the L/C Issuer and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Agent (by telephone or in writing) that the Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, the L/C Issuer will provide the Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Agent or the applicable Borrower, at least one Business Day prior to the requested date of issuance or amendment of the applicable

Letter of Credit, that one or more applicable conditions contained in **Article IV** shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower or the applicable Subsidiary or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If the applicable Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an **"Auto-Extension Letter of Credit"**); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the **"Non-Extension Notice Date"**) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the applicable Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided, however*, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of **clause (ii) or (iii) of Section 2.03(a)** or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Agent that the Required Lenders have elected not to permit such extension or (2) from the Agent, any Lender or any Borrower that one or more of the applicable conditions specified in **Section 4.02** is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) If the applicable Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that permits the automatic reinstatement of all or a portion of the stated amount thereof after any drawing thereunder (each, an **"Auto-Reinstatement Letter of Credit"**). Unless otherwise directed by the L/C Issuer, the applicable Borrower shall not be required to make a specific request to the L/C Issuer to permit such reinstatement. Once an Auto-Reinstatement Letter of Credit has been issued, except as provided in the following sentence, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to reinstate all or a portion of the stated amount thereof in accordance with the provisions of such Letter of Credit. Notwithstanding the foregoing, if such Auto-Reinstatement Letter of Credit permits the L/C Issuer to decline to reinstate all or any portion of the stated amount thereof after a drawing thereunder by giving notice of such non-reinstatement within a specified number of days after such drawing (the **"Non-Reinstatement Deadline"**), the L/C Issuer shall not permit such reinstatement if it has received a notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Reinstatement Deadline (A) from the Agent that the Required Lenders have elected not to permit such reinstatement or (B) from the

Agent, any Lender or any Borrower that one or more of the applicable conditions specified in **Section 4.02** is not then satisfied (treating such reinstatement as an L/C Credit Extension for purposes of this *clause*) and, in each case, directing the L/C Issuer not to permit such reinstatement.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the applicable Borrower and the Agent a true and complete copy of such Letter of Credit or amendment and any other Issuer Documents related thereto.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the applicable Borrower and the Agent thereof. Not later than 11:00 a.m. on the Business Day following the Honor Date (each such date of notice, a “**Notice Date**”), the applicable Borrower shall reimburse the L/C Issuer through the Agent in an amount equal to the amount of such drawing (together with any interest thereon for such period from the Honor Date to the date such reimbursement is made). If the applicable Borrower fails to so reimburse the L/C Issuer by such time, the Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing including any applicable interest thereon (the “**Unreimbursed Amount**”), and the amount of such Lender’s Applicable Percentage thereof. In such event, and in lieu of the obligation of the applicable Borrower to reimburse the L/C Issuer as provided in the two immediately preceding sentences such Borrower shall be deemed to have requested a Committed Borrowing of **BaseDaily SOFR** Rate Loans to be disbursed on the Notice Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in **Section 2.02** for the principal amount of **BaseDaily SOFR** Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in **Section 4.02** (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Agent pursuant to this **Section 2.03(c)(i)** may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to **Section 2.03(c)(i)** make funds available (and the Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Agent’s Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 12:00 noon on the Business Day specified in such notice by the Agent, whereupon, subject to the provisions of **Section 2.03(c)(iii)**, each Lender that so makes funds available shall be deemed to have made a **BaseDaily SOFR** Rate Loan to the applicable Borrower in such amount. The Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of **BaseDaily SOFR** Rate Loans because the conditions set forth in **Section 4.02** cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In

such event, each Lender's payment to the Agent for the account of the L/C Issuer pursuant to **Section 2.03(c)(ii)** shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this **Section 2.03**.

(iv) Until each Lender funds its Committed Loan or its L/C Advance pursuant to this **Section 2.03(c)** to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make Committed Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this **Section 2.03(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the applicable Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided, however*, that each Lender's obligation to make Committed Loans pursuant to this **Section 2.03(c)** is subject to the conditions set forth in **Section 4.02** (other than delivery by the applicable Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of such Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.03(c)** by the time specified in **Section 2.03(c)(ii)**, then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate *per annum* equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Committed Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Agent) with respect to any amounts owing under this **clause (vi)** shall be conclusive absent manifest error.

(d) Repayment of Participations by the Lenders.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with **Section 2.03(c)**, if the Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the applicable Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Agent), the Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Agent.

(ii) If any payment received by the Agent for the account of the L/C Issuer pursuant to **Section 2.03(c)(i)** is required to be returned under any of the circumstances described in **Section 10.05** (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate *per annum* equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under this **clause** shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute.** The obligation of the applicable Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of any Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice any Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower or any Subsidiary.

The applicable Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with such Borrower's instructions or other irregularity, such Borrower will immediately notify the L/C Issuer. The applicable Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuer.** Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided, however*, that this assumption is not intended to, and shall not, preclude a Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in *clauses (i) through (viii) of Section 2.03(e)*; *provided, however*, that anything in such clauses to the contrary notwithstanding, a Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to such Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which such Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("*SWIFT*") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary. The L/C Issuer shall provide to the Agent a list of outstanding Letters of Credit (together with type, amounts and denominated currency) issued by it on a monthly basis.

(g) **Letters of Credit Issued for Subsidiaries.** Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrowers shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of such Borrower, and

that such Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(h) **Applicability of ISP.** Unless otherwise expressly agreed by the L/C Issuer and the applicable Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to any Borrower for, and the L/C Issuer's rights and remedies against any Borrower shall not be impaired by, any action or inaction of the L/C Issuer required under any law or practice that is required to be applied to any Letter of Credit, including the law of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(i) **Letter of Credit Fees.** The Borrowers shall pay to the Agent for the account of each Lender in accordance, subject to **Section 2.17**, with its Applicable Percentage a Letter of Credit fee (the "**Letter of Credit Fee**") for each Letter of Credit equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand, (ii) computed on a quarterly basis in arrears and (iii) computed for the actual number of days that such Letters of Credit are outstanding during the applicable quarter. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) **Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.**

(i) With respect to any Letter of Credit issued by Bank of America, in its capacity as L/C Issuer, the applicable Borrower shall pay directly to Bank of America in such capacity for its own account a fronting fee, at the rate *per annum* specified in the applicable Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. In addition, the applicable Borrower shall pay directly to the Bank of America, in its capacity as L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of Bank of America, in its capacity as L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(ii) With respect to any Letter of Credit issued by an L/C Issuer other than Bank of America, the applicable Borrower shall pay directly to such L/C Issuer for its own account a fronting fee with respect to each issuance or amendment of a Letter of Credit, at a rate and at the times separately agreed between such Borrower and such L/C Issuer. In addition, the applicable Borrower shall pay directly to such L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(iii) For the purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.06**.

(k) **Conflict with Issuer Documents.** In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(l) **L/C Issuer Reports to the Agent.** Unless otherwise agreed by the Agent, each L/C Issuer shall, in addition to its notification obligations set forth elsewhere in this **Section**, provide the Agent a Letter of Credit Report, as set forth below:

(i) reasonably prior to the time that such L/C Issuer issues, amends, renews, increases or extends a Letter of Credit, the date of such issuance, amendment, renewal, increase or extension and the stated amount of the applicable Letters of Credit after giving effect to such issuance, amendment, renewal or extension (and whether the amounts thereof shall have changed);

(ii) on each Business Day on which such L/C Issuer makes a payment pursuant to a Letter of Credit, the date and amount of such payment;

(iii) on any Business Day on which the applicable Borrower fails to reimburse a payment made pursuant to a Letter of Credit required to be reimbursed to such L/C Issuer on such day, the date of such failure and the amount of such payment;

(iv) on any other Business Day, such other information as the Agent shall reasonably request as to the Letters of Credit issued by such L/C Issuer; and

(v) for so long as any Letter of Credit issued by an L/C Issuer is outstanding, such L/C Issuer shall deliver to the Agent (A) on the last Business Day of each calendar month, (B) at all other times a Letter of Credit Report is required to be delivered pursuant to this Agreement, and (C) on each date that (1) an L/C Credit Extension occurs or (2) there is any expiration, cancellation and/or disbursement, in each case, with respect to any such Letter of Credit, a Letter of Credit Report appropriately completed with the information for every outstanding Letter of Credit issued by such L/C Issuer.

(m) **Additional L/C Issuers.** Any Lender hereunder may become an L/C Issuer upon receipt by the Agent of a fully executed Notice of Additional L/C Issuer which shall be signed by the Borrowers, the Agent and the applicable L/C Issuer. Such new L/C Issuer shall provide its Letter of Credit Commitment in such Notice of Additional L/C Issuer and upon the receipt by the Agent of the fully executed Notice of Additional L/C Issuer, the defined term Letter of Credit

Commitment shall be deemed amended to incorporate the Letter of Credit Commitment of such new L/C Issuer.

2.04 — Bid Loans.

(a) — **General.** Subject to the terms and conditions set forth herein, each Lender agrees that the Borrowers may request the Lenders to submit offers to make loans (each such loan, a “**Bid Loan**”) to the Borrowers pursuant to this **Section 2.04** at any time during the Availability Period so long as Holdings maintains an Investment Grade Rating at each such time; *provided*, however, that after giving effect to any Bid Borrowing, (i) the Total Outstandings shall not exceed the Aggregate Commitments, and (ii) the aggregate Outstanding Amount of all Bid Loans shall not exceed the Bid Loan Sublimit. There shall not be more than five different Interest Periods in effect with respect to Bid Loans at any time.

(b) — **Requesting Competitive Bids.** The Borrowers may request the submission of Competitive Bids by delivering a Bid Request to the Agent not later than 9:00 a.m. (i) one Business Day prior to the requested date of any Bid Borrowing that is to consist of Absolute Rate Loans, or (ii) four Business Days prior to the requested date of any Bid Borrowing that is to consist of Eurodollar Margin Bid Loans. Each Bid Request shall specify (i) the requested date of the Bid Borrowing (which shall be a Business Day), (ii) the aggregate principal amount of Bid Loans requested (which must be at least \$10,000,000 or a whole multiple of \$1,000,000 in excess thereof), (iii) the Type of Bid Loans requested, and (iv) the duration of the Interest Period with respect thereto, and shall be signed by a Responsible Officer of the applicable Borrower. No Bid Request shall contain a request for (i) more than one Type of Bid Loan or (ii) Bid Loans having more than three different Interest Periods. Unless the Agent otherwise agrees in its sole discretion, no Borrower may submit a Bid Request if it has submitted another Bid Request within the prior five Business Days.

(c) — **Submitting Competitive Bids.**

(i) — The Agent shall promptly notify each Lender of each Bid Request received by it from the applicable Borrower and the contents of such Bid Request.

(ii) — Each Lender may (but shall have no obligation to) submit a Competitive Bid containing an offer to make one or more Bid Loans in response to such Bid Request. Such Competitive Bid must be delivered to the Agent not later than 7:30 a.m. (A) on the requested date of any Bid Borrowing that is to consist of Absolute Rate Loans, and (B) three Business Days prior to the requested date of any Bid Borrowing that is to consist of Eurodollar Margin Bid Loans; *provided*, however, that any Competitive Bid submitted by Bank of America in its capacity as a Lender in response to any Bid Request must be submitted to the Agent not later than 7:15 a.m. on the date on which Competitive Bids are required to be delivered by the other Lenders in response to such Bid Request. Each Competitive Bid shall specify (A) the proposed date of the Bid Borrowing; (B) the principal amount of each Bid Loan for which such Competitive Bid is being made, which principal amount (x) may be equal to, greater than or less than the Commitment of the bidding Lender, (y) must be at least \$10,000,000 or a whole multiple of \$1,000,000 in excess thereof, and (z) may not exceed the principal amount of Bid Loans for which Competitive Bids were requested; (C) if the proposed Bid Borrowing is to consist of Absolute Rate Bid Loans, the Absolute Rate offered for each such Bid Loan and the Interest Period applicable thereto; (D) if the proposed Bid Borrowing is to consist of Eurodollar Margin Bid Loans, the Eurodollar Bid Margin with respect to each such

~~Eurodollar Margin Bid Loan and the Interest Period applicable thereto; and (E) the identity of the bidding Lender.~~

~~(iii) — Any Competitive Bid shall be disregarded if it (A) is received after the applicable time specified in clause (ii) above, (B) is not substantially in the form of a Competitive Bid as specified herein, (C) contains qualifying, conditional or similar language, (D) proposes terms other than or in addition to those set forth in the applicable Bid Request, or (E) is otherwise not responsive to such Bid Request. Any Lender may correct a Competitive Bid containing a manifest error by submitting a corrected Competitive Bid (identified as such) not later than the applicable time required for submission of Competitive Bids. Any such submission of a corrected Competitive Bid shall constitute a revocation of the Competitive Bid that contained the manifest error. the Agent may, but shall not be required to, notify any Lender of any manifest error it detects in such Lender's Competitive Bid.~~

~~(iv) — Subject only to the provisions of **Sections 3.02, 3.03 and 4.02** and **clause (iii)** above, each Competitive Bid shall be irrevocable.~~

~~(d) — **Notice to Borrowers of Competitive Bids.** Not later than 8:00 a.m. (i) on the requested date of any Bid Borrowing that is to consist of Absolute Rate Loans, or (ii) three Business Days prior to the requested date of any Bid Borrowing that is to consist of Eurodollar Margin Bid Loans, the Agent shall notify the applicable Borrower of the identity of each Lender that has submitted a Competitive Bid that complies with **Section 2.04(c)** and of the terms of the offers contained in each such Competitive Bid.~~

~~(e) — **Acceptance of Competitive Bids.** Not later than 8:30 a.m. (i) on the requested date of any Bid Borrowing that is to consist of Absolute Rate Loans, and (ii) three Business Days prior to the requested date of any Bid Borrowing that is to consist of Eurodollar Margin Bid Loans, the applicable Borrower shall notify the Agent of its acceptance or rejection of the offers notified to it pursuant to **Section 2.04(d)**. No Borrower shall be under any obligation to accept any Competitive Bid and may choose to reject all Competitive Bids. In the case of acceptance, such notice shall specify the aggregate principal amount of Competitive Bids for each Interest Period that is accepted. Borrowers may accept any Competitive Bid in whole or in part; provided that:~~

~~(i) — the aggregate principal amount of each Bid Borrowing may not exceed the applicable amount set forth in the related Bid Request;~~

~~(ii) — the principal amount of each Bid Loan must be at least \$10,000,000 or a whole multiple of \$1,000,000 in excess thereof;~~

~~(iii) — the acceptance of offers may be made only on the basis of ascending Absolute Rates or Eurodollar Bid Margins within each Interest Period; and~~

~~(iv) — Borrowers may not accept any offer that is described in **Section 2.04(c)(iii)** or that otherwise fails to comply with the requirements hereof.~~

~~(f) — **Procedure for Identical Bids.** If two or more Lenders have submitted Competitive Bids at the same Absolute Rate or Eurodollar Bid Margin, as the case may be, for the same Interest Period, and the result of accepting all of such Competitive Bids in whole (together with any other Competitive Bids at lower Absolute Rates or Eurodollar Bid Margins, as~~

the case may be, accepted for such Interest Period in conformity with the requirements of ~~Section 2.04(e)(iii)~~ would be to cause the aggregate outstanding principal amount of the applicable Bid Borrowing to exceed the amount specified therefor in the related Bid Request, then, unless otherwise agreed by the applicable Borrower, the Agent and such Lenders, such Competitive Bids shall be accepted as nearly as possible in proportion to the amount offered by each such Lender in respect of such Interest Period, with such accepted amounts being rounded to the nearest whole multiple of \$1,000,000.

~~(g) — Notice to Lenders of Acceptance or Rejection of Bids.~~ The Agent shall promptly notify each Lender having submitted a Competitive Bid whether or not its offer has been accepted and, if its offer has been accepted, of the amount of the Bid Loan or Bid Loans to be made by it on the date of the applicable Bid Borrowing. ~~Any Competitive Bid or portion thereof that is not accepted by the applicable Borrower by the applicable time specified in Section 2.04(e) shall be deemed rejected.~~

~~(h) — Notice of Eurodollar Rate.~~ If any Bid Borrowing is to consist of Eurodollar Margin Loans, the Agent shall determine the Eurodollar Rate for the relevant Interest Period, and promptly after making such determination, shall notify the applicable Borrower and the Lenders that will be participating in such Bid Borrowing of such Eurodollar Rate.

~~(i) — Funding of Bid Loans.~~ Each Lender that has received notice pursuant to ~~Section 2.04(g)~~ that all or a portion of its Competitive Bid has been accepted by a Borrower shall make the amount of its Bid Loan(s) available to the Agent in immediately available funds at the Agent's Office not later than 10:00 a.m. on the date of the requested Bid Borrowing. Upon satisfaction of the applicable conditions set forth in ~~Section 4.02~~, the Agent shall make all funds so received available to such Borrower in like funds as received by the Agent.

~~(j) — Notice of Range of Bids.~~ After each Competitive Bid auction pursuant to this ~~Section 2.04~~, the Agent shall notify each Lender that submitted a Competitive Bid in such auction of the ranges of bids submitted (without the bidder's name) and accepted for each Bid Loan and the aggregate amount of each Bid Borrowing

2.04 ~~Intentionally Omitted~~.

2.05 **Prepayments.**

(a) Any Borrower may, upon delivery of a Notice of Loan Prepayment to the Agent, at any time or from time to time voluntarily prepay Committed Loans in whole or in part without premium or penalty; *provided* that (i) such notice must be received by the Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of ~~Eurodollar~~Term SOFR Rate Committed Loans and (B) one Business Day prior to any date of prepayment of ~~LIBOR~~ Daily SOFR Rate Loans or Base Rate Loans; (ii) any prepayment of ~~Eurodollar~~Term SOFR Rate Committed Loans or ~~LIBOR~~ Daily SOFR Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Committed Loans to be prepaid and, if ~~Eurodollar~~Term SOFR Rate Committed Loans are to be prepaid, the Interest Period(s) of such Loans. The Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If the applicable Borrower gives a prepayment notice, then such Borrower shall make such prepayment

and the payment amount specified in such notice shall be due and payable on the date specified therein; provided, any notice of prepayment given in connection with a notice of termination of the Commitments given by such Borrower may state that such prepayment notice is conditioned upon the effectiveness of other credit facilities or capital raising, in which case such notice may (subject to compliance by such Borrower with the requirements of **Section 3.05**) be revoked by such Borrower (by notice to the Agent on or prior to the specified effective date) if such condition is not satisfied. Any prepayment of a ~~Eurodollar Rate Committed~~ Loan shall be accompanied by all accrued interest on the amount prepaid, together with, in the case of Term SOFR Rate Committed Loans, any additional amounts required pursuant to **Section 3.05**. ~~Any prepayment of a Eurodollar Rate Committed Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.~~ Subject to **Section 2.17**, each such prepayment shall be applied to the Committed Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) If for any reason the Total Outstandings at any time exceed the Aggregate Commitments, the Borrowers shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided, however*, that the Borrowers shall not be required to Cash Collateralize the L/C Obligations pursuant to this **Section 2.05(b)** unless after the prepayment in full of the Loans the Total Outstandings exceed the Aggregate Commitments then in effect.

~~(c) No Bid Loan may be prepaid without the prior consent of the applicable Bid Loan Lender.~~

2.06 Termination or Reduction of Commitments

The Borrowers may, upon notice to the Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; *provided* that (a) any such notice shall be received by the Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (b) any such reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof, (c) the Borrowers shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments and (d) if, after giving effect to any reduction of the Aggregate Commitments, ~~the Bid Loan Sublimit, or~~ the Letter of Credit Sublimit exceeds the amount of the Aggregate Commitments, such Sublimit shall be automatically reduced by the amount of such excess; *provided*, any notice of termination of the Aggregate Commitments given by the Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities or capital raising, in which case such notice may be revoked by the Borrowers (by notice to the Agent on or prior to the specified effective date) if such condition is not satisfied. The Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

2.07 Repayment of Loans

~~(a)~~ The Borrowers shall repay to the Lenders on the Maturity Date the aggregate principal amount of Committed Loans outstanding on such date.

~~(b) — The Borrowers shall repay each Bid Loan on the last day of the Interest Period in respect thereof.~~

2.08 **Interest.**

(a) **General**

~~(a) —~~ Subject to the provisions of *subsection (b)* below, (i) each ~~Eurodollar~~Term SOFR Rate Committed Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate *per annum* equal to ~~the Eurodollar Rate~~Term SOFR for such Interest Period *plus* the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate *per annum* equal to the Base Rate *plus* the Applicable Rate; and (iii) each ~~LIBOR~~-Daily SOFR Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate *per annum* equal to the sum of ~~the LIBOR~~-Daily RateSimple SOFR *plus* the Applicable Rate ~~set forth in the Eurodollar Rate column in “Applicable Rate”;~~ and (iv) ~~each Bid Loan shall bear interest on the outstanding principal amount thereof for the Interest Period therefor at a rate per annum equal to the Eurodollar Rate for such Interest Period plus (or minus) the Eurodollar Bid Margin, or at the Absolute Rate for such Interest Period, as the case may be.~~

(b) **Default Interest**

(i) ~~(b) (i)~~ If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such overdue amount shall thereafter bear interest at a fluctuating interest rate *per annum* at all times equal to the Default Rate to the fullest extent permitted by applicable laws.

(ii) If any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate *per annum* at all times equal to the Default Rate to the fullest extent permitted by applicable laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in *clauses (b)(i)* and *(b)(ii)* above), the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate *per annum* at all times equal to the Default Rate to the fullest extent permitted by applicable laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) **Payment**

~~(e) —~~ Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after

judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees

. In addition to certain fees described in *subsections (i) and (j) of Section 2.03*:

(a) **Facility Fee.** The Borrowers shall pay to the Agent for the account of each Lender in accordance with its Applicable Percentage, a facility fee equal to the Applicable Rate *times* the actual daily amount of such Lender's Commitment (and, if Committed Loans or L/C Obligations remain outstanding after the Commitments have terminated, on such Lender's Applicable Percentage of such outstanding Obligations), subject to adjustment as provided in *Section 2.17*. The facility fee shall accrue at all times, including at any time during which one or more of the conditions in *Article IV* is not met, and shall be due and payable quarterly in arrears on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the Closing Date. The facility fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) **Other Fees.** The Borrowers shall pay to the Agent and Arrangers the fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees; Retroactive Adjustment of Applicable Rate.

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, *provided* that any Loan that is repaid on the same day on which it is made shall, subject to *Section 2.12(a)*, bear interest for one day. Each determination by the Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of Holdings or for any other reason, the Borrowers or the Lenders determine that (i) the Total Debt to Total Adjusted Asset Value Ratio as calculated by the Borrowers as of any applicable date while this Agreement is in effect was inaccurate and (ii) a proper calculation of the Total Debt to Total Adjusted Asset Value Ratio would have resulted in higher pricing for such period, the Borrowers shall immediately and retroactively be obligated to pay to the Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This *paragraph* shall not limit the rights of the Agent, any Lender or the L/C Issuer, as the case may be, under *Section 2.03(c)(iii)*, *2.03(i)* or *2.08(b)* or under *Article VIII*. The Borrowers' obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder until the

date that is one year after such termination and repayment. Upon payment by the Borrowers of any shortfall as provided in this *clause (b)*, any Default or Event of Default resulting solely from the failure to pay such amounts when the interest or fees for the relevant period were due and payable or any representations and warranties made in this regard shall be deemed cured for all purposes.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Agent in the ordinary course of business. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of any Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Agent, each Borrower shall execute and deliver to such Lender (through the Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in *subsection (a)*, each Lender and the Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Agent shall control in the absence of manifest error.

2.12 Payments Generally; the Agent's Clawback.

(a) **General.** All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the Agent's Office in Dollars and in immediately available funds not later than 11:00 a.m. on the date specified herein. the Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Agent after 11:00 a.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by a Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) **Funding by Lenders; Presumption by the Agent.** Unless the Agent shall have received notice from a Lender prior to the proposed date of any Committed Borrowing of ~~Eurodollar Rate Committed Loans (or, in the case of any Committed Borrowing of Base Rate Loans or LIBOR Daily Rate Loans, prior to 9:00 a.m. on the date of such Committed Borrowing)~~ that such Lender will not make available to the Agent such Lender's share of such Committed Borrowing, the Agent may assume that such Lender has made such share available on such date

in accordance with **Section 2.02** (~~or, in the case of a Committed Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02~~) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by the Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to ~~Base~~Daily SOFR Rate Loans. If the applicable Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Committed Borrowing to the Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Committed Borrowing. Any payment by any Borrower shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Agent.

(ii) **Payments by the Borrowers; Presumptions by the Agent.** Unless the Agent shall have received notice from the applicable Borrower prior to the date on which any payment is due to the Agent for the account of the Lenders or the L/C Issuer hereunder that such Borrower will not make such payment, the Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due.

With respect to any payment that the Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which the Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the "**Rescindable Amount**"): (A) the applicable Borrower has not in fact made such payment; (B) the Agent has made a payment in excess of the amount so paid by the applicable Borrower (whether or not then owed); or (C) the Agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Agent forthwith on demand the Rescindable Amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation.

A notice of the Agent to any Lender or any Borrower with respect to any amount owing under this **subsection (b)** shall be conclusive, absent manifest error.

(c) **Failure to Satisfy Conditions Precedent.** If any Lender makes available to the Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this **Article II**, and such funds are not made available to the applicable Borrower by the Agent because the conditions to the applicable Credit Extension set forth in **Article IV** are not satisfied

or waived in accordance with the terms hereof, the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) **Obligations of Lenders Several.** The obligations of the Lenders hereunder to make Committed Loans, to fund participations in Letters of Credit and to make payments pursuant to **Section 10.04(c)** are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under **Section 10.04(c)** on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under **Section 10.04(c)**.

(e) **Funding Source.** Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders

. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, or the participations in L/C Obligations held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value) participations in the Committed Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, *provided that*:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this **Section** shall not be construed to apply to (x) any payment made by or on behalf of any Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender or Disqualified Institution), (y) the application of Cash Collateral provided for in **Section 2.15**, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations to any assignee or participant, other than an assignment to any Borrower or any Subsidiary thereof (as to which the provisions of this **Section** shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Increase in Commitments.

(a) **Request for Increase.** Provided there exists no Default, upon notice to the Agent (which shall promptly notify the Lenders), the Borrowers may from time to time, after the Closing Date, but no more than one time in any calendar year, request an increase in the Aggregate Commitments (which increase may take the form of additional Commitments, one or more term loan tranches, or both) by an amount (for all such requests) not exceeding \$500,000,000; *provided* that any such request for an increase shall be in a minimum amount of \$25,000,000. At the time of sending such notice, the Borrowers (in consultation with the Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) **Lender Elections to Increase.** Each Lender shall notify the Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) **Notification by the Agent; Additional Lenders.** The Agent shall notify the Borrowers and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Agent, the L/C Issuer (which approvals shall not be unreasonably withheld), the Borrowers may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to the Agent and its counsel.

(d) **Effective Date and Allocations.** If the Aggregate Commitments are increased in accordance with this *Section*, the Agent and the Borrowers shall determine the effective date (the "**Increase Effective Date**") and the final allocation of such increase. The Agent shall promptly notify the Borrowers and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) **Conditions to Effectiveness of Increase.** As conditions precedent to such increase, (i) the Borrowers shall deliver to the Agent a certificate dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer (A) certifying and attaching the resolutions adopted by the Borrowers and the Guarantors approving or consenting to such increase, and (B) certifying that, before and after giving effect to such increase, (1) the representations and warranties contained in *Article V* and the other Loan Documents are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this *Section 2.14*, the representations and warranties contained in *subsections (a) and (b) of Section 5.02* shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a) and (b)*, respectively, of *Section 6.01*, and (2) no Default exists and (ii)(A) upon the reasonable request of any Lender made at least ten days prior to the effectiveness of such increase, each Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the Act, in each case at least five days prior to the effectiveness of such increase; and (B) at least five days prior to the effectiveness of such increase, any Borrower that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Borrower. To the extent that the increase of the

Commitments shall take the form of a new term loan tranche, this Agreement shall be amended, in form and substance reasonably satisfactory to the Agent, the Borrowers and the Lenders providing such term loan tranche to include such terms as are necessary and customary to implement such term loan commitments. The Borrowers shall prepay any Committed Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to **Section 3.05**) to the extent necessary to keep the outstanding Committed Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this **Section**.

(f) **Conflicting Provisions.** This **Section** shall supersede any provisions in **Section 2.13** or **10.01** to the contrary.

2.15 Extension of Maturity Date.

(a) **Request for Extension.** The Borrowers may, by written notice to the Agent (who shall promptly notify the Lenders) not earlier than 90 days and not later than 30 days prior to the Initial Maturity Date, request that the Initial Maturity Date be extended to the First Extended Maturity Date. If the Initial Maturity Date is extended to the First Extended Maturity Date, then the Borrowers may, by written notice to the Agent (who shall promptly notify the Lenders) not earlier than 90 days and not later than 30 days prior to the First Extended Maturity Date, request that the First Extended Maturity Date be extended to the Second Extended Maturity Date.

(b) **Conditions Precedent.** As a condition precedent to the extension of the Initial Revolving Maturity Date to the First Extended Revolving Maturity Date and the extension of the First Extended Revolving Maturity Date to the Second Extended Revolving Maturity Date pursuant to this **Section**:

(i) the Borrowers shall deliver to the Agent a certificate of each Loan Party (in sufficient copies for each Revolving Credit Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such extension and (B) in the case of the Borrowers, certifying that, as of the date of the notice described in **Section 2.15(a)**, as of the Maturity Date then in effect and after giving effect to such extension, (1) the representations and warranties contained in **Article V** and the other Loan Documents are true and correct in all material respects (without duplication of any materiality standards set forth therein) on and as of the Maturity Date in effect, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this **Section 2.15**, the representations and warranties contained in **subsections (a) and (b) of Section 5.02** shall be deemed to refer to the most recent statements furnished pursuant to **clauses (a) and (b)**, respectively, of **Section 6.01**, and (2) no Default exists;

(ii) (A) upon the reasonable request of any Lender made at least ten days prior to the Maturity Date then in effect, each Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including the Act, in each case at least five days prior to the Maturity Date then in effect; and (B) at least five days prior to the Maturity Date then in effect, any Borrower that qualifies as a “legal entity customer”

under the Beneficial Ownership Regulation shall deliver, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Borrower;

(iii) on the Maturity Date then in effect, the Borrowers shall pay to the Agent, for the pro rata account of each Lender in accordance with their respective Applicable Percentages, an extension fee equal to 6.25 basis points (0.625%) of the Aggregate Commitments as of such date, which fee shall, when paid, be fully earned and non-refundable under any circumstances; and

(iv) on the date of the notice described in **Section 2.15(a)** and the date of such extension and after giving effect thereto, (A) the representations and warranties contained in **Article V** and the other Loan Documents are true and correct in all material respects (without duplication of any materiality standards set forth therein) on and as of the Maturity Date in effect, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this **Section 2.15**, the representations and warranties contained in **subsections (a) and (b) of Section 5.02** shall be deemed to refer to the most recent statements furnished pursuant to **clauses (a) and (b)**, respectively, of **Section 6.01**, and (B) no Default exists.

(c) **Conflicting Provisions.** This **Section** shall supersede any provisions in **Section 2.13** or **10.01** to the contrary.

2.16 Cash Collateral.

(a) **Certain Credit Support Events.** If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrowers shall be required to provide Cash Collateral pursuant to **Section 8.02(c)**, or (iv) there shall exist a Defaulting Lender, then the Borrowers shall immediately (in the case of **clause (iii)** above) or within one Business Day (in all other cases) following any request by the Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to **clause (iv)** above, after giving effect to **Section 2.17(a)(iv)** and any Cash Collateral provided by the Defaulting Lender). For purposes of clarification, if Fronting Exposure remains after giving effect to **Section 2.17(a)(iv)**, the Agent shall *first* request that the Defaulting Lender deliver to the Agent Cash Collateral in an amount sufficient to cover the remaining Fronting Exposure and, *second*, to the extent Fronting Exposure remains after giving effect to Cash Collateral provided by the Defaulting Lender, the Agent shall request that the Borrowers deliver to the Agent Cash Collateral in an amount sufficient to cover the remaining Fronting Exposure. Such Cash Collateralization may be effected by means of a Borrowing of Committed Loans or a funding of participation interests (assuming for such purposes that the Letters of Credit that will survive the Maturity Date had been fully drawn on the Letter of Credit Expiration Date).

(b) **Grant of Security Interest.** All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Agent, for the benefit of the Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property

so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to **Section 2.16(c)**. If at any time the Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the relevant Defaulting Lender and, to the extent Fronting Exposure remains thereafter, the Borrowers will promptly upon demand by the Agent, pay or provide to the Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. The relevant Defaulting Lender or, to the extent not paid by the relevant Defaulting Lender, the Borrowers shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this **Section 2.15** or **Sections 2.03, ~~2.04~~, 2.05, 2.17** or **8.02** in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) **Release.** Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with **Section 10.06(b)(vi)**)) or (ii) the Agent's and the L/C Issuer's good faith determination that there exists excess Cash Collateral; *provided, however*, (x) that Cash Collateral furnished by or on behalf of any Borrower shall not be released during the continuance of a Default (and following application as provided in this **Section 2.15** may be otherwise applied in accordance with **Section 8.03**), and (y) the Person providing Cash Collateral and the L/C Issuer, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations. Between a Defaulting Lender and a Borrower as to any particular Cash Collateral, the Cash Collateral furnished by such Borrower shall be released prior to any Cash Collateral furnished by the Defaulting Lender.

2.17 Defaulting Lenders.

(a) **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "**Required Lenders**" and in **Section 10.01**.

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Article VIII** or otherwise) or received by the Agent from a Defaulting Lender pursuant to **Section 10.08** shall be applied at such time or times as may be determined by the Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the L/C

Issuer hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with **Section 2.15**; *fourth*, as the Borrowers may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; *fifth*, if so determined by the Agent and the Borrowers, to be held in a deposit account and released *pro rata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with **Section 2.15**; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in **Section 4.02** were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations are held by the Lenders *pro rata* in accordance with the Commitments hereunder without giving effect to **Section 2.17(a)(iv)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 2.17(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) **Certain Fees.**

(A) Each Defaulting Lender shall be entitled to receive fees payable under **Section 2.09(a)** for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the outstanding principal amount of the Committed Loans funded by it, and (2) its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 2.16**.

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to **Section 2.16**.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to **clause (B)** above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's

participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to **clause (iv)** below, (y) pay to the L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) **Reallocation of Applicable Percentages to Reduce Fronting Exposure.** All or any part of such Defaulting Lender's participation in L/C Obligations shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in **Section 4.02** are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause any Non-Defaulting Lender's share of the Total Outstandings to exceed such Non-Defaulting Lender's Commitment. Subject to **Section 10.19**, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) **Cash Collateral.** If the reallocation described in **clause (a)(iv)** above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in **Section 2.16**.

(b) **Defaulting Lender Cure.** If the Borrowers, the Agent, and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Committed Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Committed Loans and funded and unfunded participations in Letters of Credit to be held on a *pro rata* basis by the Lenders in accordance with their Applicable Percentages (without giving effect to **Section 2.17(a)(iv)**), whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of any Borrower while that Lender was a Defaulting Lender; and *provided, further*, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) **Notification of Defaulting Lender.** Upon becoming aware that a Lender is a Defaulting Lender, the Agent shall reasonably promptly notify the Borrowers that such Lender is a Defaulting Lender.

2.18 Joint and Several Obligations

. Except as specifically provided herein, the Obligations of the Borrowers shall be joint and several in nature regardless of which such Person actually receives Credit Extensions hereunder or the amount of such Credit Extensions received or the manner in which the Lender accounts for such Credit Extensions

on its books and records. Notwithstanding the foregoing, each Borrower (other than the Company) hereby irrevocably appoints the Company to act as its agent for all purposes of this Agreement and the other Loan Documents and agrees that (a) the Company may execute such documents on behalf of such Borrower (in its capacity as a Borrower) as the Company deems appropriate in its sole discretion, (b) any notice or communication delivered by the Agent or the Lender to the Company shall be deemed delivered to such Borrower and (c) the Agent or the Lenders may accept, and be permitted to rely on, any document, instrument or agreement executed by the Company on behalf of such Borrower. The provisions of **Section 11.02** and **11.04** are incorporated herein by reference and shall apply to the obligations of the Borrowers under this **Section 2.18** *mutatis mutandis*.

III. TAXES, YIELD PROTECTION AND ILLEGALITY.

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable laws. If any applicable laws (as determined in the good faith discretion of the applicable Withholding Agent) require the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to **subsection (e)** below.

(ii) If any Withholding Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding Taxes, from any payment, then (A) the Agent shall withhold or make such deductions as are determined by the Withholding Agent to be required based upon the information and documentation it has received pursuant to **subsection (e)** below, (B) the Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this **Section 3.01**) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction for Indemnified Taxes been made.

(iii) If any Withholding Agent shall be required by any applicable laws other than the Code to withhold or deduct any Taxes from any payment, then (A) the Withholding Agent, as required by such laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to **subsection (e)** below, (B) such Withholding Agent, to the extent required by such laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this **Section 3.01**) the applicable Recipient receives an

amount equal to the sum it would have received had no such withholding or deduction for Indemnified Taxes been made.

(b) **Payment of Other Taxes by the Borrowers.** Without limiting the provisions of *subsection (a)* above, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes

(c) **Tax Indemnification.**

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this *Section 3.01*) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto (except for any such penalties, interest and reasonable expenses to the extent attributable to the gross negligence or willful misconduct of such Recipient), whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Company by a Lender or the L/C Issuer (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Each of the Loan Parties shall, and does hereby, jointly and severally indemnify the Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Agent as required pursuant to *Section 3.01(c)(ii)* below.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after written demand therefor, (x) the Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (y) the Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of *Section 10.06(d)* relating to the maintenance of a Participant Register and (z) the Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Agent under this *clause (ii)*.

(d) **Evidence of Payments.** Upon request by a Borrower or the Agent, as the case may be, after any payment of Taxes by any Borrower or by the Agent to a Governmental Authority as provided in this *Section 3.01*, the applicable Borrower shall deliver to the Agent or the Agent shall deliver to the applicable Borrower, as the case may be, the original or a certified

copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by laws to report such payment or other evidence of such payment reasonably satisfactory to the applicable Borrower or the Agent, as the case may be.

(e) **Status of Lenders; Tax Documentation.**

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Agent, at the time or times reasonably requested by the Borrowers or the Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Agent as will enable the Borrowers or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 3.01(e)(ii)(A)**, **(ii)(B)** and **(ii)(D)** below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that a Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to such Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "*interest*" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "*business profits*" or "*other income*" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under *Section 881(c)* of the Code, (x) a certificate substantially in the form of **Exhibit D-1** to the effect that such Foreign Lender is not a “bank” within the meaning of *Section 881(c)(3)(A)* of the Code, a “10 percent shareholder” of such Borrower within the meaning of *Section 881(c)(3)(B)* of the Code, or a “controlled foreign corporation” described in *Section 881(c)(3)(C)* of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of **Exhibit D-2** or **Exhibit D-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of **Exhibit D-4** on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to such Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of such Borrower or the Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit such Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in *Section 1471(b)* or *1472(b)* of the Code, as applicable), such Lender shall deliver to such Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by such Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by *Section 1471(b)(3)(C)(i)* of the Code) and such additional documentation reasonably requested by such Borrower or the Agent as may be necessary for such Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this **clause (D)**, “FATCA” shall include any amendments made to FATCA after the Closing Date.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this **Section 3.01** expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify such Borrower and the Agent in writing of its legal inability to do so.

(iv) For the purposes of this **Section 3.01(e)**, the term Lender includes any L/C Issuer.

(f) **Treatment of Certain Refunds.** Unless required by applicable laws, at no time shall the Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient determines in good faith that it has received a refund of any Taxes (including any application thereof to another amount owed to the refunding Governmental Authority) as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this **Section 3.01**, it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Loan Party under this **Section 3.01** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Loan Party pursuant to this **subsection** the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This **subsection** shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) **Survival.** Each party's obligations under this **Section 3.01** shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Illegality

. If any Lender determines that any ~~law~~Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund ~~Committed~~ Loans whose interest is determined by reference to ~~the Eurodollar Rate~~SOFR, Term SOFR, or Daily Simple SOFR, or to determine or charge interest rates based upon ~~the Eurodollar Rate~~SOFR, Term SOFR or the LIBOR Daily ~~Rate~~Simple SOFR, or any Governmental Authority has imposed material restrictions on the authority of such Lender to ~~purchase or sell, or to take deposits of, Dollars in the London interbank market~~engage in reverse repurchase of U.S. Treasury securities transactions of the type included in the determination of SOFR, then, on notice thereof by such Lender to the Company through the Agent, (a) any obligation of such Lender to make or continue ~~Eurodollar~~either Term SOFR Rate Loans or LIBOR Daily Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans or LIBOR DailySOFR Rate Loans shall be suspended and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the

~~Eurodollar Rate~~ Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender, shall, if necessary to avoid such illegality, be determined by the Agent without reference to the ~~Eurodollar Rate~~ Term SOFR component of the Base Rate, in each case until such Lender notifies the Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, ~~(x) the Borrowers~~ (i) each Borrower shall, upon demand from such Lender (with a copy to the Agent), prepay or, if applicable, convert all ~~Eurodollar Rate Loans and LIBOR Daily~~ Term SOFR Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Agent without reference to the ~~Eurodollar Rate~~ Term SOFR component of the Base Rate), either ~~(i) on the last day of the Interest Period therefor~~, if such Lender may lawfully continue to maintain such ~~Eurodollar Rate Loans or LIBOR Daily~~ Term SOFR Rate Loans to such day, ~~on the last day of the Interest Period therefor~~, or ~~(ii) or immediately~~, if such Lender may not lawfully continue to maintain such ~~Eurodollar~~ Term SOFR Rate Loans ~~or LIBOR~~, (ii) each Borrower shall, upon demand from such Lender (with a copy to the Agent), immediately prepay or, if applicable, convert all Daily SOFR Rate Loans to the last day of the Interest Period therefor, on the last day that such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender may lawfully continue shall, if necessary to maintain avoid such Eurodollar Rate Loans or LIBOR Daily Rate Loans illegality, be determined by the Agent without reference to the Term SOFR component of the Base Rate), and (yiii) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate or LIBOR Daily Rate SOFR, the Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate Term SOFR component thereof until the Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate or the LIBOR Daily Rate SOFR. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

3.03 Inability to Determine Rates.

(a) If in connection with any request for a ~~Eurodollar~~ Term SOFR Rate Loan, or ~~LIBOR Daily~~ SOFR Rate Loan, or a conversion ~~to of~~ of ~~Daily SOFR Rate Loans to Term SOFR Rate Loans~~ or a continuation ~~thereof~~ of any of such advances, as applicable, (ia) the Agent determines (which determination shall be conclusive absent manifest error) that (Ai) deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan or (B)(x) adequate and reasonable means do not no Successor Rate has been determined in accordance with this Section 3.03, and the circumstances under Section 3.03(b) or the Scheduled Unavailability Date has occurred, or (ii) adequate and reasonable means do not otherwise exist for determining the Eurodollar Rate or LIBOR Daily Rate Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Rate Loan or in connection with respect to an existing or proposed Eurodollar Base Rate Loan, or LIBOR Daily Rate Loan, respectively, or (iii) adequate and reasonable means do not otherwise exist for determining Daily Simple SOFR in connection with an existing or proposed Base Daily SOFR Rate Loan and (y) the circumstances described in Section 3.03(c) do not apply (in each case with respect to clause (i), "Impacted Loans"), or (ii) the Agent or (b) the Agent or Required Lenders determine that for any reason ~~Eurodollar Rate that~~ Term SOFR for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or the LIBOR Daily Rate Simple SOFR with respect to a proposed ~~LIBOR Daily Rate Loan advance~~ does not adequately and fairly reflect the cost to such Lenders of funding such ~~Loan advance~~, the Agent will promptly so notify the Company and each Lender. Thereafter, ~~(x) the obligation of the~~ Lenders to make or maintain ~~Eurodollar~~ Term SOFR Rate Loans, Daily SOFR Rate Loans, or ~~LIBOR to convert~~ Daily SOFR Rate Loans to Term SOFR Rate Loans, shall be suspended (to the extent of the affected ~~Eurodollar~~ Term SOFR Rate Loans, ~~LIBOR Daily~~ SOFR Rate Loans, or

Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the ~~Eurodollar Rate~~ Term SOFR component of the Base Rate, the utilization of the ~~Eurodollar Rate~~ Term SOFR component in determining the Base Rate shall be suspended, in each case until the Agent (or, in the case of a determination by Required Lenders described in Section 3.03(a), until the Agent upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, ~~the~~ (1) Borrowers may revoke any pending request for a Borrowing of, or conversion to, or continuation of ~~Eurodollar~~ Term SOFR Rate Loans or Daily SOFR Rate Loans (to the extent of the affected ~~Eurodollar~~ Term SOFR Rate Loans, Daily SOFR Rate Loans, or Interest Periods) ~~or LIBOR Daily Rate Loans~~ or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein, (2) any outstanding Term SOFR Rate Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period, and (3) any outstanding Daily SOFR Rate Loans shall immediately be deemed to have been converted to Base Rate Loans.

(b) ~~Notwithstanding the foregoing, if the Agent has made the determination described in clause (a)(i) of this Section, the Agent in consultation with the Borrowers and the Required Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Agent revokes the notice delivered with respect to the Impacted Loans under clause (a)(i) of this Section, (ii) the Agent or the Required Lenders notify the Agent and the Company that such alternative interest rate does not adequately and fairly reflect the cost to the Lenders of funding the Impacted Loans, or (iii) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Agent and the Company written notice thereof. The Agent will promptly (in one or more notices) notify the Borrowers and each Lender of the establishment of an alternative interest rate pursuant to this clause (b); anything to the contrary in this Agreement or any other Loan Documents, if the Agent determines (which determination shall be conclusive absent manifest error), or the Company or the Required Lenders notify the Agent (with, in the case of Required Lenders, a copy to Borrowers) that the Company or the Required Lenders (as applicable) have determined, that:~~

(c) ~~Notwithstanding anything to the contrary herein or in any other Loan Document:~~

(i) ~~On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of LIBOR’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of overnight/Spot-Next, 1-week, 1-month, 2-month, 3-month, 6-month and 12-month Dollar LIBOR tenor settings. On the earliest of (A) the date that all Available Tenors of Dollar LIBOR have permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative, (B) June 30, 2023 and (C) the Early Opt-in Effective Date in respect of a SOFR Early Opt-in, if the then-current Benchmark is LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis; if adequate~~

and reasonable means do not exist for ascertaining one (1) month, three (3) month or six (6) month interest periods of Term SOFR, including because the Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) ~~(x) Upon (A) the occurrence of a Benchmark Transition Event or (B) a determination by the Agent that neither of the alternatives under *clause (a)* of the definition of Benchmark Replacement are available, the Benchmark Replacement will replace the then current Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. on the fifth Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders (and any such objection shall be conclusive and binding absent manifest error); provided that solely in the event that the then current Benchmark at the time of such Benchmark Transition Event is not a SOFR-based rate, the Benchmark Replacement therefor shall be determined in accordance with *clause (a)* of the definition of Benchmark Replacement unless the Agent determines that neither of such alternative rates is available. CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Agent or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one (1) month, three (3) month and six (6) month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of Dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Agent, that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one (1) month, three (3) month and six (6) month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the “Scheduled Unavailability Date”);~~

~~(y) On the Early Opt-in Effective Date in respect of an Other Rate Early Opt-in, the Benchmark Replacement will replace LIBOR for all purposes~~

then, on a date and time determined by the Agent (any such date, the “*Term SOFR Replacement Date*”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to *clause (a)* above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document ~~in respect of any setting of such Benchmark on such day and all subsequent settings~~ with Daily Simple SOFR for any payment period for interest calculated ~~that can be determined by the Agent, in each case, without any amendment to, or further action or consent of any other party to this Agreement or any other Loan Document.~~

~~(iii) At any time that the administrator of the then current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to~~

~~measure and that representativeness will not be restored, the Borrowers may revoke any request for a borrowing of, conversion to or continuation of Loans to be made, converted or continued that would bear interest by reference to such Benchmark until the Borrowers' receipt of notice from the Agent that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrowers will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During the period referenced in the foregoing sentence, the component of Base Rate based upon the Benchmark will not be used in any determination of Base Rate, this Agreement or any other Loan Document (the "Successor Rate").~~

If the Successor Rate is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (i) if the Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in *clauses (a) or (b)* above have occurred with respect to Daily Simple SOFR or the Successor Rate then in effect, then in each case, the Agent and the Company may amend this Agreement solely for the purpose of replacing Term SOFR, Daily Simple SOFR, and/or any then current Successor Rate in accordance with this *Section* at the end of any *Interest Period, relevant interest payment date or payment period for interest calculated*, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for similar Dollar denominated credit facilities syndicated and agented in the United States for such alternative benchmark, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar Dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a "Successor Rate". Any such amendment shall become effective after execution by the Company and the Agent at 5:00 p.m. on the fifth (5th) Business Day after the Agent shall have posted such proposed amendment to all Lenders and the Company unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders object to such amendment.

The Agent will promptly (in one (1) or more notices) notify the Company and each Lender of the implementation of any Successor Rate.

Any Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Agent, such Successor Rate shall be applied in a manner as otherwise reasonably determined by the Agent.

Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero (0) the Successor Rate will be deemed to be zero (0) for the purposes of this Agreement and the other Loan Documents.

(iv)—In connection with the implementation ~~and administration~~ of a ~~Benchmark Replacement~~ Successor Rate, the Agent will have the right to make ~~Benchmark Replacement~~ Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such ~~Benchmark Replacement~~ Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided that, with respect to any such amendment effected, the Agent shall post each such amendment*

implementing such Conforming Changes to the Company and the Lenders reasonably promptly after such amendment becomes effective.

~~(v) — The Agent will promptly notify the Borrowers and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Agent pursuant to this **Section 3.03(e)**, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this **Section 3.03(e)**.~~

~~(vi) — At any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then current Benchmark is a term rate (including Term SOFR or LIBOR), then the Agent may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (B) the Agent may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.~~

3.04 **Increased Costs.**

(a) **Increased Costs Generally.** If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender ~~(except any reserve requirement contemplated by **Section 3.04(e)**)~~ or the L/C Issuer;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, Taxes described in **clauses (b)** through **(d)** of the definition of Excluded Taxes and Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer ~~or the London interbank market~~ any other condition, cost or expense (other than Taxes) affecting this Agreement or ~~Eurodollar Rate Loans or LIBOR Daily Rate~~ Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Committed Loan the interest on which is determined by reference to ~~the Eurodollar Rate~~ Term SOFR (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in *subsection (a) or (b)* of this *Section* and delivered to the Company shall be conclusive absent manifest error. The Borrowers shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this *Section* shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, *provided* that the Borrowers shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this *Section* for any increased costs incurred or reductions suffered more than three months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the three-month period referred to above shall be extended to include the period of retroactive effect thereof).

~~(e) — **Reserves on Eurodollar Rate Loans or LIBOR Daily Rate Loans.** The Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "*Eurocurrency liabilities*"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan and each LIBOR Daily Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, *provided* the Company shall have received at least 10 Business Days' prior notice (with a copy to the Agent) of such additional interest from such Lender. If a Lender fails to give notice Business Days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 Business Days from receipt of such notice.~~

3.05 Compensation for Losses

. Upon demand of any Lender (with a copy to the Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any ~~Eurodollar Rate Loan or LIBOR Daily~~Term SOFR Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by a Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow ~~or~~, continue a ~~Eurodollar Rate Loan or to convert any Base Rate Loan to a Eurodollar Rate~~ Loan on the date or in the amount notified by a Borrower; or

(c) any assignment of a ~~Eurodollar~~Term SOFR Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by a Borrower pursuant to **Section 10.13**;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained (but excluding any loss of anticipated profits). The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

~~For purposes of calculating~~The amounts payable by ~~the Borrowers to the Lenders~~any Borrower under this **Section 3.05**, each Lender shall ~~never~~ be ~~deemed to have funded each Eurodollar Rate Loan or LIBOR Daily Rate Loan made by it at the Eurodollar Rate or LIBOR Daily Rate, respectively, for such Loan by a matching deposit or other borrowing~~less than zero (0) or greater than is permitted by applicable Law. For the avoidance of doubt, no amounts will be owing under this **Section 3.05** in connection with the ~~London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar~~prepayment of any Daily SOFR Rate Loan or ~~LIBOR Daily~~Base Rate Loan ~~was in fact so funded~~(if any).

3.06 Mitigation Obligations; Replacement of Lenders.

(a) **Designation of a Different Lending Office.** If any Lender requests compensation under **Section 3.04**, or requires the Borrowers to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to **Section 3.01**, or if any Lender gives a notice pursuant to **Section 3.02**, then at the request of the Borrowers such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Section 3.01** or **3.04**, as the case may be, in the future, or eliminate the need for the notice pursuant to **Section 3.02**, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be, (as compared to actions taken by such Lender with respect to other similarly situated borrowers). The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under **Section 3.04**, or if any Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.01**, or any Lender gives a notice pursuant to **Section 3.02**, and, in each case, such Lender has declined

or is unable to designate a different lending office in accordance with *Section 3.06(a)*, the Borrowers may replace such Lender in accordance with *Section 10.13*.

3.07 Survival

. All of the Borrowers' obligations under this *Article III* shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Agent.

IV. CONDITIONS PRECEDENT TO EFFECTIVENESS AND CREDIT EXTENSIONS.

4.01 Conditions of Effectiveness

. This Agreement shall become effective upon satisfaction of the following conditions precedent:

(a) The Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the applicable Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Agent and each of the Lenders:

- (i) executed counterparts of this Agreement;
- (ii) an executed counterpart of the Guaranty;
- (iii) a Note executed by each Borrower in favor of each Lender requesting a Note;

(iv) such certificates of resolutions or other action, incumbency certificates (including specimen signatures) and/or other certificates of the secretary or assistant secretary of each Loan Party as the Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with the execution of this Agreement and the other Loan Documents;

(v) such documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing and in good standing in its jurisdiction of organization;

(vi) a favorable opinion of legal counsel to the Loan Parties addressed to the Agent and each Lender, as to such customary matters concerning the Loan Parties and the Loan Documents as the Agent may reasonably request;

(vii) a certificate signed by a Responsible Officer of the Borrowers certifying that the conditions specified in *Sections 4.02(a)* and *(b)* have been satisfied, provided that for the purposes of this *clause (vii)*, any references to Credit Extensions in such Sections shall be disregarded;

(viii) a duly completed Compliance Certificate as of the last day of the fiscal quarter of Holdings ended on June 30, 2021, signed by a Responsible Officer of Holdings; and

(ix) Remittance Instructions and Borrower's Instruction Certificate.

(b) Any fees required to be paid under the Fee Letters to the Agent, the Arrangers or the Lenders on or before the Closing Date shall have been paid.

(c) Unless waived by the Agent, the Borrowers shall have paid all fees, reasonable and documented out-of-pocket expenses, charges and disbursements of Haynes and Boone, LLP, as counsel to the Agent (directly to such counsel if requested by the Agent) to the extent invoiced at least two business days prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the Closing Date (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Agent).

(d) (i) Upon the reasonable request of any Lender made at least ten days prior to the Closing Date, each Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including, the Act, in each case at least five days prior to the Closing Date; and (ii) at least five days prior to the Closing Date, any Loan Party that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall deliver, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

Without limiting the generality of the provisions of the last paragraph of **Section 9.03**, for purposes of determining compliance with the conditions specified in this **Section 4.01**, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions

The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type, or a continuation of ~~Eurodollar~~ Term SOFR Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrowers contained in **Article V** or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (without duplication of any materiality standards set forth therein) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this **Section 4.02**, the representations and warranties contained in **subsections (a) and (b) of Section 5.02** shall be deemed to refer to the most recent statements furnished pursuant to **clauses (a) and (b)**, respectively, of **Section 6.01**.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) the Agent and, if applicable, the L/C Issuer, shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type or a continuation of ~~Eurodollar~~ Term SOFR Rate Loans) submitted by a Borrower shall be deemed to be a representation and warranty that the conditions specified in *Sections 4.02(a)* and *(b)* have been satisfied on and as of the date of the applicable Credit Extension.

V. REPRESENTATIONS AND WARRANTIES

. Each Loan Party represents and warrants to the Agent and the Lenders that:

5.01 Organization

. Each Loan Party (other than any Series) is duly organized, validly existing and in good standing under the laws of the state of its organization. Each Series has been duly established by the Company. Each Significant Subsidiary (other than any series of a limited liability company) is duly organized, validly existing and in good standing under the laws of the state of its organization, except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect. Each Significant Subsidiary that is a series of a limited liability company has been duly established. Each Loan Party and each Significant Subsidiary (i) has the full power and authority to own its properties and to carry on its business as now being conducted, (ii) is duly qualified in every state where the nature of its business requires that it do so, and (iii) is in good standing under the laws of every jurisdiction outside the state of its organization in which it owns or leases property or conducts business and in each case of *(ii)* and *(iii)*, in which the failure to so qualify would have a Material Adverse Effect. Each Loan Party and each Significant Subsidiary has complied in all material respects with (or is exempt from the application of) all material federal, state and local laws, regulations and orders that are, or in the absence of any exemption could be, applicable to the operations of its business, including public utility, bank holding company, state agricultural and Environmental and Safety Laws, in each case except to the extent that the failure to so comply could not reasonably be expected to have a Material Adverse Effect. Each Loan Party has full power, authority and right to execute and deliver, and to perform and observe, the provisions of this Agreement and the other Loan Documents to which such Loan Party is a party and to carry out the transactions contemplated hereby and thereby. The execution, delivery and performance of the Loan Documents by each Loan Party have been authorized by all necessary corporate and other action, and, when duly executed and delivered, will be the legal, valid and binding obligations of such Loan Party, enforceable against it in accordance with their respective terms except as enforceability may be limited by applicable Debtor Relief Laws and by general principles of equity (whether considered in a proceeding at law or in equity). Each of the Borrowers and Holdings represents and warrants that *Schedule 5.01* contains complete and correct lists, as of the Closing Date, of the Subsidiaries of Holdings, showing, as to each Subsidiary, the name thereof, the jurisdiction of its organization, and the percentage of equity outstanding owned by Holdings and each other Subsidiary.

5.02 Financial Statements.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of

Holdings and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Debt, to the extent required in accordance with GAAP.

(b) The unaudited consolidated balance sheet of Holdings and its Subsidiaries dated June 30, 2021, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP, subject to the absence of footnotes and to normal year-end audit adjustments .

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.03 Actions Pending

. There is no action, suit, investigation or proceeding pending or, to the knowledge of any Borrower, threatened in writing against any Loan Party or any Subsidiary or any properties or rights of any Loan Party or any Subsidiary, by or before any court, arbitrator or administrative or governmental body which could reasonably be expected to result in a Material Adverse Effect.

5.04 Outstanding Debt

. No Loan Party nor any Subsidiary has any Debt outstanding except as permitted by this Agreement.

5.05 Title to Properties

. Each Loan Party and each Significant Subsidiary has such title to its properties and assets as is necessary for the conduct of the business which such Loan Party or Significant Subsidiary presently undertakes or contemplates undertaking, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect. There are no Liens on such properties and assets that (a) materially restrict any Loan Party's or Significant Subsidiary's intended use and enjoyment thereof in the ordinary course of business or (b) are not permitted by **Section 7.02**. There is no default under any lease to which any Loan Party or any such Significant Subsidiary is a lessee, lessor, sublessee or sublessor, except to the extent any of the foregoing defaults could not reasonably be expected to result in a Material Adverse Effect.

5.06 Taxes

. Each Loan Party and each Significant Subsidiary has filed all Federal and state income and other material tax returns which are required to be filed by it. Each Loan Party and each such Subsidiary has paid all material taxes as shown on its returns and on all assessments received to the extent that such taxes have become due, except such assessments as are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP. The Loan Parties and their Subsidiaries do not have any unpaid tax obligations which collectively could reasonably be expected to have a Material Adverse Effect.

5.07 Conflicting Agreements and Other Matters

. Neither the execution nor delivery of this Agreement or the other Loan Documents, nor the making of Credit Extensions hereunder, nor fulfillment of nor compliance with the terms and provisions of this Agreement or the other Loan Documents will conflict with, or result in a breach of the terms, conditions or provisions of, or constitute a default under, or result in any violation of, or result in the creation of any Lien upon any of the properties or assets of any Loan Party or any Subsidiary pursuant to, their respective articles of incorporation, bylaws or similar organizational documents, any award of any arbitrator or any material agreement, material instrument, order, judgment, decree, and, after due investigation and to any Borrower's best knowledge, any statute, law, rule or regulation to which any Loan Party or any Subsidiary is party to or subject, as applicable.

5.08 ERISA.

(a) There has been no failure to make any minimum required contributions (as defined in *Section 302* of ERISA and *Section 412* of the Code), whether or not waived, with respect to any Plan (other than a Multiemployer Plan). No liability to the PBGC has been or is expected by any Borrower or any ERISA Affiliate to be incurred with respect to any Plan (other than a Multiemployer Plan) by any Borrower, any Subsidiary or any ERISA Affiliate which is or would be materially adverse to the business, condition (financial or otherwise) or operations of the Borrowers and their Subsidiaries taken as a whole. Neither any Borrower, any of its Subsidiaries or any ERISA Affiliate has incurred or presently expects to incur any withdrawal liability under *Title IV* of ERISA with respect to any Multiemployer Plan which is or would be materially adverse to the Loan Parties and its Subsidiaries taken as a whole. The execution and delivery of this Agreement and the other Loan Documents and the Credit Extensions hereunder will be exempt from, or will not involve any transaction which is subject to the prohibitions of, *Section 406* of ERISA and will not involve any transaction in connection with which a penalty could be imposed under *Section 502(i)* of ERISA or a tax could be imposed pursuant to *Section 4975* of the Code.

(b) Each Borrower is not and will not be (i) an employee benefit plan subject to *Title I* of ERISA, (ii) a plan or account subject to *Section 4975* of the Code; (iii) an entity deemed to hold "plan assets", within the meaning of *Section 3(42)* of ERISA, of any such plans or accounts for purposes of ERISA or the Code; or (iv) a "governmental plan" within the meaning of *Section 3(32)* of ERISA.

5.09 Government Consent

. Neither the nature of any Loan Party nor any of its Subsidiaries, nor any of their respective businesses or properties, nor any relationship between any Loan Party or any Subsidiary and any other Person, nor any circumstance in connection with the Credit Extensions hereunder is such as to require any authorization, consent, approval, exemption or other action by, notice to or filing with any court, administrative or governmental body (other than routine filings after the date of closing with the SEC and/or state blue sky authorities) in connection with (a) the execution and delivery of this Agreement and the other Loan Documents or (b) fulfillment of or compliance with the terms and provisions of this Agreement and the other Loan Documents.

5.10 Investment Company Status

. No Loan Party is an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, or an "investment adviser" within the meaning of the Investment Advisers Act of 1940.

5.11 Real Property Matters

. Except as could not reasonably be expected to have a Material Adverse Effect: (a) each Loan Party and each Significant Subsidiary has, or is in the process of procuring, for the real property which it owns or uses, such authorizations, consents, approvals, licenses and permissions (collectively, “**Consents**”) that such Loan Party or such Significant Subsidiary believes or has been advised by counsel to be now necessary for it to own, hold, develop, use or operate such real property in its current or intended manner, all in material compliance with applicable laws and regulations, and (b) no Loan Party nor any Significant Subsidiary has received any notice that any such Consent is necessary which has not been obtained, or is in the process of being obtained, other than applications for the same that have been or will be timely filed and are being or will be diligently pursued with the appropriate governmental authorities and agencies.

5.12 Possession of Franchises, Licenses, Etc

. Except as could not reasonably be expected to have a Material Adverse Effect: (a) Holdings and its Subsidiaries possess all franchises, certificates, licenses, development and other permits and other authorizations from governmental political subdivisions or regulatory authorities and all patents, trademarks, service marks, trade names, copyrights, licenses, easements, rights of way and other rights, free from burdensome restriction, that are necessary in the judgment of the Borrowers in any material respect for the ownership, maintenance and operation of their business, properties and assets, (b) no Loan Party nor any of its Subsidiaries is in violation of any such rights and (c) no event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights, or which adversely affects the rights of any Loan Party or its Subsidiaries thereunder.

5.13 Environmental and Safety Matters

. Each Loan Party and its Subsidiaries and all of their respective properties and facilities have complied at all times and in all respects with all Environmental and Safety Laws except where failure to comply could not reasonably be expected to result in a Material Adverse Effect.

5.14 Hostile Tender Offers

. None of the proceeds of the Credit Extensions will be used to finance any offer to purchase, or any purchase of, shares of capital stock of any corporation or Equity Interests in any other entity, or securities convertible into or representing the beneficial ownership of, or rights to acquire, any such shares or Equity Interests, if such shares, Equity Interests, securities or rights are of a class which is publicly traded on any securities exchange or in any over-the-counter market (other than purchases for portfolio investment purposes of such shares, Equity Interests, securities or rights which, together with any shares, Equity Interests, securities or rights then owned, represent less than 5% of the Equity Interests or beneficial ownership of such corporation or other entity) and such offer or purchase has not been duly approved by the board of directors of such corporation or the equivalent governing body of such other entity.

5.15 Employee Relations

. No Loan Party nor any Subsidiary is the subject of (a) any material strike, work slowdown or stoppage, union organizing drive or other similar activity or (b) any material action, suit, investigation or other proceeding involving alleged employment discrimination, unfair termination, employee safety or similar

matters, that in either case would reasonably be expected to have a Material Adverse Effect nor, to the best knowledge of any Borrower, is any such event imminent or likely to occur.

5.16 OFAC

. None of the Loan Parties, nor any of their Subsidiaries, nor, to the knowledge of the Loan Parties and their Subsidiaries, any director, officer, employee or agent thereof, is an individual or entity that is, or is owned 50% or more or controlled by any Person or Persons that are (a) currently the target of any Sanctions, (b) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant Sanctions authority or (c) located, organized or resident in a Designated Jurisdiction (such Persons referred to herein as "**Sanctioned Persons**"). The Loan Parties and their Subsidiaries have conducted their businesses in compliance in all material respects with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

5.17 Disclosure.

(a) Neither this Agreement nor any other document, certificate or statement furnished to the Agent or any Lender by or on behalf of the Borrowers in connection herewith, when taken together with all other written information furnished, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not misleading; provided that with respect to projections and other *pro forma* financial information included in such information, each Borrower only represents that such information was based upon good faith estimates and assumptions believed by the preparer thereof to be reasonable at the time made, it being recognized by the Agent and the Lenders that such financial information as it relates to future events is not to be viewed as a fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

(b) As of the date most recently delivered, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.18 Anti-Corruption Laws

. The Loan Parties and their Subsidiaries have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other applicable anti-corruption legislation in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.19 No Affected Financial Institution

. No Loan Party is an Affected Financial Institution.

5.20 Covered Entities

. No Loan Party is a Covered Entity.

VI. AFFIRMATIVE COVENANTS

. So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than any contingent indemnification obligations for which no claim for payment has been made), or any Letter of Credit shall remain outstanding (unless Cash Collateral arrangements have been made with the L/C Issuers for any such outstanding Letters of Credit in accordance with this Agreement):

6.01 Financial Information

. The Borrowers and Holdings shall deliver to the Agent and each Lender:

(a) as soon as practicable and in any event within 60 days after the end of each quarterly period (other than the last quarterly period) (commencing with the fiscal quarter ending September 30, 2021) in each fiscal year (or if earlier, 10 Business Days after the date required to be filed with the SEC), or the date on which another creditor of any Loan Party first receives such information, consolidated statements of income and cash flows of Holdings and its Subsidiaries for the period from the beginning of the current fiscal year to the end of such quarterly period, and a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such quarterly period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year, all in reasonable detail and certified by an authorized financial officer of the Loan Parties, subject only to changes resulting from year-end adjustments;

(b) as soon as practicable and in any event within the earlier to occur of 120 days after the end of each fiscal year of the Loan Parties (or if earlier, 10 Business Days after the date required to be filed with the SEC) or the date on which another creditor of the Loan Parties first receives such information, consolidated statements of income and cash flows of Holdings and its Subsidiaries for such year and a consolidated balance sheet of Holdings and its Subsidiaries as at the end of such fiscal year, setting forth in each case in comparative form corresponding figures from the preceding annual audit, all in reasonable detail and reasonably satisfactory in scope to the Required Lenders and certified by independent public accountants of recognized standing whose opinion shall be unqualified (other than solely as a result of the upcoming maturity of the Obligations within one year from the time such opinion is delivered) and otherwise satisfactory in scope and substance to the Required Lenders, provided that such opinion shall be deemed otherwise satisfactory if prepared in accordance with GAAP and generally accepted accounting standards;

(c) together with each delivery of financial statements required by *clauses (a) and (b)* above, a Compliance Certificate (i) setting forth the aggregate amount of Restricted Payments made during such fiscal period and computations showing the calculation of the covenants in *Sections 7.01, 7.03(c), 7.04(d), and 7.04(e)*; (ii) listing the Unencumbered Investment Properties and each other asset included in the calculation of Unencumbered Income Producing Assets Value and separately setting forth computations showing the calculation of the Unencumbered Income Producing Assets Value of each Unencumbered Investment Property and each other asset included therein; and (iii) stating that to the best of his or her knowledge, after due inquiry, there exists no Default as of the date of the Compliance Certificate, or if any such Default exists, specifying the nature and period of existence thereof and what action the Loan Parties propose to take with respect thereto;

(d) promptly upon transmission thereof, copies of all such financial, proxy and information statements, notices and other reports as are sent to Holdings' stockholders generally

and copies of all registration statements (with such exhibits as any holder reasonably requests) and all reports which are filed with the SEC;

(e) promptly upon receipt thereof, a copy of each other material report submitted to Holdings or any of its Subsidiaries by independent accountants in connection with any material annual, interim or special audit made by them of the books of Holdings or such Subsidiary pursuant to a request by Holdings' board of directors;

(f) promptly after the furnishing thereof, copies of any certificate or report furnished to any other holder of the debt securities of any Loan Party pursuant to the terms of the Note Purchase Agreement or any other indenture, loan, credit or similar agreement or instrument and not otherwise required to be furnished to the Lenders pursuant to any other clause of this **Section 6.01**;

(g) at the time of delivery of the financial statements referenced in **Section 6.01(b)**, an annual forecast of Holdings for the then current fiscal year;

(h) annually, a report with respect to the real property of the Loan Parties substantially in form and substance similar to that certain supplemental real estate and financial information report with respect to Holdings reported as of and for the fiscal year ended December 31, 2020 or otherwise in form and substance satisfactory to the Agent;

(i) promptly following any request therefor, information and documentation reasonably requested by the Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money-laundering rules and regulations, including, the Act and the Beneficial Ownership Regulation;

(j) promptly, notice of any change or possible change in a Debt Rating;

(k) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(l) notice of the occurrence of any Default; and

(m) promptly, of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including any of the following (to the extent they have resulted or could reasonably be expected to result in a Material Adverse Effect) (i) breach or non-performance of, or any default under, a Contractual Obligation of Holdings or any Subsidiary; (ii) any action, suit, dispute, litigation, investigation, proceeding or suspension involving any Loan Party or any Subsidiary or any of their respective properties and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting Holdings or any Subsidiary, including pursuant to any applicable Environmental and Safety Laws.

Each Loan Party also covenants that forthwith upon a Responsible Officer obtaining actual knowledge of a Default, it will deliver to the Agent and the Lenders an Officers' Certificate specifying

the nature and period of existence thereof and what action the Borrowers propose to take with respect thereto.

Documents required to be delivered pursuant to **Section 6.01(a), (b), (d) or (h)** (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings and the Borrowers post such documents, or provides a link thereto on the Borrowers' website on the Internet at the website address listed on **Schedule 10.02**; or (ii) on which such documents are posted on Holding's or a Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); *provided that*: (i) Holdings and the Borrowers shall deliver paper copies of such documents to the Agent or any Lender that requests Holdings and the Borrowers to deliver such paper copies until a written request to cease delivering paper copies is given by the Agent or such Lender and (ii) the Company shall notify the Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents. The Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Borrower hereby acknowledges that (a) the Agent and/or the Arrangers may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of such Borrower hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "**Platform**") and (b) certain of the Lenders (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to such Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," such Borrower shall be deemed to have authorized the Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to such Borrower or its securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in **Section 10.07**); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, no Borrower shall be under any obligation to mark any Borrower Materials "PUBLIC."

6.02 Inspection of Property

. Holdings shall, and shall cause its Subsidiaries to, permit any employees or designated representatives of the Agent, any of its Related Parties or any other Lender with a Commitment in excess of \$5,000,000, at such Person's expense, to visit and inspect any of the properties of Holdings and its Subsidiaries, to examine their books and financial records and to make copies thereof or extracts therefrom and to discuss their affairs, finances and accounts with the Responsible Officers and the Loan Parties' independent certified public accountants, all at such times as the applicable Loan Party and such Person reasonably agree and as often as such Person may reasonably request; *provided that* a Responsible Officer of

Holdings shall have reasonable prior notice of, and may elect to be present during, discussions with the Loan Parties' independent public accountants.

6.03 Covenant to Secure Obligations Equally

. If (x) Holdings or any Subsidiary shall create assume or otherwise incur any Lien upon any of its property or assets, whether now owned or hereafter acquired other than Liens permitted under **Section 7.02** or (y) Holdings or any Subsidiary shall create, assume or otherwise incur any Lien upon any of its property or assets, whether now owned or hereafter acquired, to secure a Principal Credit Facility, then, in each case, Holdings or such Subsidiary, as applicable, shall make effective provision whereby the Obligations will be simultaneously secured by such Lien equally and ratably with any and all other Debt secured pursuant to terms and provisions, including an intercreditor agreement, reasonably satisfactory to the Agent so long as any such other Debt shall be so secured; provided that (i) to the extent the provision in the Note Purchase Agreement which requires ratable security for the obligations under the Note Purchase Agreement (or any similar provision therein relating to the provision of security) is deleted or otherwise no longer of any force or effect then Holdings and its Subsidiaries shall not be required to secure the Obligations or take any other action pursuant to this **Section 6.03** and (ii) the terms hereof shall exclude any purchase money or capital lease indebtedness permitted to be incurred under the terms of this Agreement.

6.04 Maintenance of Properties; Insurance

. Holdings shall, and shall cause its Subsidiaries to (a) maintain or cause to be maintained in good repair, working order and condition all material properties used or useful at that time in its business and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof and (b) maintain insurance with reputable and financially sound insurers in such amounts and against such liabilities and hazards as is customarily maintained by other companies operating similar businesses and together with each delivery of financial statements under **Section 6.01(b)**, upon the request of the Agent, deliver certificates of insurance to the foregoing effect to the Agent.

6.05 Environmental and Safety Laws.

(a) The Company shall deliver promptly to the Agent notice of (i) any material enforcement, cleanup, removal or other material governmental or regulatory action instituted or, to Holdings' and the Borrowers' best knowledge, threatened against Holdings, any Borrower or any Significant Subsidiary pursuant to any Environmental and Safety Laws, (ii) all material Environmental Liabilities and Costs against or in respect of Holdings, any Borrower or any Significant Subsidiary or any of its properties and (iii) Holdings', any Borrower's or any Significant Subsidiary's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any of its properties that Holdings, any Borrower or such Significant Subsidiary has reason to believe could cause such property or any material part thereof to be subject to any material restrictions on its ownership, occupancy, transferability or use under any Environmental and Safety Laws.

(b) Holdings and each Borrower shall, and shall cause its Significant Subsidiaries to, keep and maintain its properties and conduct its and their operations in compliance with all applicable Environmental and Safety Laws except where the failure to do so would not reasonably be expected to have a Material Adverse Effect.

6.06 Use of Proceeds

. Holdings shall, and shall cause its Subsidiaries to, use the proceeds of the Credit Extensions (a) to finance working capital, capital expenditures (including acquisitions), dividends and distributions, and other lawful corporate purposes, (b) to refinance certain existing indebtedness of the Borrowers, (c) for support of commercial paper issued by the Borrowers, (d) to finance permitted acquisitions and (e) to pay fees and expenses incurred in connection with this Agreement; provided that in no event shall the proceeds of any Credit Extension be used in contravention of any law or of any Loan Document.

6.07 Additional Loan Parties

. Each of Holdings and each Borrower covenants that:

(a) Holdings and each Borrower shall cause any Subsidiary of Holdings that incurs, guarantees or is otherwise liable on any Unsecured Debt under any Principal Credit Facility (each such Person, an “**Additional Guarantor**”), to, concurrently upon any such incurrence, any such guarantee or becoming so liable (i) become a Guarantor by executing and delivering to the Agent a Joinder Agreement and (ii) deliver to the Agent such organization documents, resolutions and favorable opinions of counsel, all in form, content and scope reasonably satisfactory to the Agent.

(b) concurrently with any such time as the Company has created a new Series, such Series (an “**Additional Borrower**”) shall (i) become party to this Agreement as a Borrower and (ii) deliver to the Agent such joinder documentation, organization documents, resolutions and favorable opinions of counsel, all in form, content and scope reasonably satisfactory to the Agent.

6.08 Anti-Corruption Laws; Sanctions

. Each Loan Party covenants that it shall and shall cause each Subsidiary to conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions.

6.09 REIT Status

. Holdings will, and will cause each of its Subsidiaries to, operate its business at all times so as to satisfy all requirements necessary to maintain Holdings’ qualification as a REIT. Holdings will maintain adequate records so as to comply in all material respects with all record-keeping requirements relating to its qualification as a REIT and applicable regulations of the Department of the Treasury promulgated thereunder and will properly prepare and timely file with the IRS all returns and reports required thereby.

VII. NEGATIVE COVENANTS

. So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than any contingent indemnification obligations for which no claim for payment has been made), or any Letter of Credit shall remain outstanding (unless Cash Collateral arrangements have been made with the L/C Issuers for any such outstanding Letters of Credit in accordance with this Agreement):

7.01 Financial Covenants.

(a) **Maximum Secured Debt to Total Adjusted Asset Value Ratio.** Holdings shall not permit the Secured Debt to Total Adjusted Asset Value Ratio at any time to exceed 0.40 to 1.00.

(b) **Minimum Consolidated Shareholders' Equity.** Holdings shall not permit the Consolidated Shareholders' Equity at any time to be less than the sum of (i) \$865,575,000, *plus* (ii) 75% of the net proceeds received from issuances of Holdings' Equity Interests after June 30, 2021.

(c) **Minimum Fixed Charge Coverage Ratio.** Holdings shall not permit the Fixed Charge Coverage Ratio as of the last day of any fiscal quarter to be less than 1.50 to 1.00.

(d) **Maximum Total Debt to Total Adjusted Asset Value Ratio.** Holdings shall not permit the Total Debt to Total Adjusted Asset Value Ratio at any time to exceed 0.60 to 1.00; *provided* that, for the four consecutive fiscal quarters following any Significant Acquisition, such ratio may exceed 0.60 to 1.00 so long as it does not exceed 0.65 to 1.00.

(e) **Maximum Unsecured Debt to Unencumbered Income Producing Assets Value Ratio.** Holdings shall not permit the Unsecured Debt to Unencumbered Income Producing Assets Value Ratio at any time to exceed 0.60 to 1.00; *provided* that, for the four consecutive fiscal quarters following any Significant Acquisition, such ratio may exceed 0.60 to 1.00 so long as it does not exceed 0.65 to 1.00.

(f) **Minimum Unencumbered Interest Coverage Ratio.** Holdings and its Subsidiaries shall maintain, at the end of such fiscal quarter, a minimum Unencumbered Interest Coverage Ratio of at least 1.75 to 1.00.

7.02 Liens

. Holdings shall not, and shall not permit any Subsidiary to, create, assume or suffer to exist at any time any Lien on or with respect to any of its property or assets, whether now owned or hereafter acquired (whether or not provision is made for the equal and ratable securing of the Obligations in accordance with the provisions of **Section 6.03**), except:

(a) Liens for taxes, assessments and other governmental charges not yet delinquent or which are being actively contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP;

(b) Liens (other than Liens imposed by ERISA) incidental to the conduct of its business or the ownership of its property and assets which were not incurred in connection with the borrowing of money or the obtaining of advances of credit, or the guarantee, maintenance,

extension or renewal of the same, and which do not in the aggregate materially detract from the value of its property or assets, taken as a whole, or materially impair the use thereof in the operation of its business;

(c) Liens securing Debt between Subsidiaries (other than a Borrower) or owing to a Borrower by a Subsidiary;

(d) any Lien created to secure all or any part of the purchase price, or to secure Debt incurred or assumed to pay all or any part of the purchase price or cost of construction, of any real property (or any improvement thereon) or tangible personal property (or any improvement thereon) acquired or constructed or capital lease transaction by a Borrower or a Subsidiary after the date of this Agreement, *provided* that

(i) any such Lien shall extend solely to the item or items of such property (or improvement thereon) so acquired or constructed and, if required by the terms of the instrument originally creating such Lien, other property (or improvement thereon) which is an improvement to or is acquired for specific use in connection with such acquired or constructed property (or improvement thereon) or which is real property being improved by such acquired or constructed property (or improvement thereon),

(ii) the principal amount of the Debt secured by any such Lien shall at no time exceed an amount equal to the fair market value of such property (or improvement thereon) at the time of such acquisition or construction, and

(iii) except with respect to any capital lease transaction, any such Lien shall be created contemporaneously with, or within 365 days after, the acquisition or construction of such property;

(e) other Liens of the Borrowers and Subsidiaries existing on the Closing Date and listed on **Schedule 7.02**;

(f) Liens securing Debt other than as set forth in the foregoing **clauses (a)-(e)**; *provided* that there shall not exist any Lien of any kind on the shares of the Voting Stock of any Subsidiary, unless Holdings and its Subsidiaries continue to own shares of Voting Stock of such Subsidiary which are not subject to any Lien and which represent a majority of the Voting Stock of such Subsidiary;

(g) statutory Liens of banks and rights of set-off, materialmen's, mechanic's, carrier's, repairmen's, warehousemen's Liens and other similar Liens arising in the ordinary course of business;

(h) judgment Liens to the extent such Liens have not caused an Event of Default under **Section 8.01(i)**;

(i) utility easements, building restrictions and such other encumbrances or charges against real property as are of a nature generally existing with respect to properties of a similar character and which do not in any material way affect the marketability of the same or interfere with the use thereof in the business of the Borrowers or the Subsidiaries;

(j) Liens (other than any Lien imposed by ERISA) arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation;

(k) deposits to secure the performance of bids, trade contracts and leases (other than Debt), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business, and deposits made to secure liability for insurance premiums to insurance carriers;

(l) Liens securing commercial letter of credits; *provided* that no such Lien shall extend to or cover any assets of any Borrower or any of its Subsidiaries other than the inventory (and bills of lading and other documents related thereto) being financed by any such commercial letter of credits; and

(m) Liens on margin stock (within the meaning of Regulation U of the FRB) that is held by Holdings as treasury stock.

7.03 Loans and Advances

. Holdings shall not permit, and shall not permit any Subsidiary to, create, or permit to remain outstanding at any time any loan or advance to any Person, except (i) Holdings may make loans or advances to any Borrower and (ii) any Borrower and its Subsidiaries may:

(a) make or permit to remain outstanding loans and advances to the Borrowers and Subsidiaries;

(b) make or permit to remain outstanding travel and other like advances and customary employee benefits in reasonable amounts to employees in the ordinary course of business;

(c) make or permit to remain outstanding Third Party loans and advances on standard arm's-length terms, provided that the aggregate amount of all such loans may not exceed at any one time an amount equal to 5% of the Total Adjusted Asset Value at such time;

(d) advances of payroll payments to employees in the ordinary course of business; and

(e) make or permit to remain outstanding purchase money loans to Persons to whom it sells real property in the ordinary course of its Property Development Activities and its Property Management Business, *provided* that the aggregate amount of all such purchase money loans may not exceed at any one time an amount equal to 15% of Consolidated Total Assets of Holdings at the end of the fiscal quarter most recently-ended as of any date of determination.

7.04 Merger and Sale of Assets

. Holdings shall not, and shall not permit any Subsidiary to, merge with or into or consolidate with any other Person or sell, lease, transfer or otherwise dispose of its assets (including, in each case, pursuant to a Division), except that so long as no Default under **Section 6.09** would result therefrom:

(a) (i) any Subsidiary of a Borrower may merge with a Borrower, so long as such Borrower is the surviving Person, (ii) a Borrower may merge with the Company, so long as the

Company is the surviving Person, and (iii) Grace Holdings may merge with the Company, so long as the Company is the surviving Person;

(b) any Subsidiary of Holdings may merge with another Subsidiary of Holdings (*provided* that any merger with a Borrower shall be done in accordance with **Section 7.04(a)**), or sell, lease, transfer or otherwise dispose of its assets to another Subsidiary of Holdings;

(c) any Subsidiary of Holdings may sell, exchange, lease, transfer or otherwise dispose of assets (other than Undeveloped Land) in the ordinary course of business;

(d) any Subsidiary of Holdings may sell, lease, transfer or otherwise dispose of assets (other than Undeveloped Land) to Third Parties so long as (i) the fair market value thereof on the date sold, leased, transferred or otherwise disposed of, together with the fair market value of all other assets sold, leased, transferred or otherwise disposed of to Third Parties pursuant to this **clause (d)** within the prior 12 months, does not represent more than 20% of the Consolidated Total Assets of Holdings at the end of the fiscal quarter most recently ended as of any date of determination and (ii) such assets, together with all other assets sold or otherwise disposed of to Third Parties pursuant to this **clause (d)** since the beginning of the most recently ended fiscal year did not contribute more than 10% of EBITDA, determined as of the four quarter period ending as of the most recent fiscal quarter with respect to which financial statements are required to be delivered pursuant to **Section 6.01(a)** or **(b)**; *provided* that, notwithstanding the percentage limitations appearing in **clauses (i)** and **(ii)**, above, sales or dispositions in excess thereof in a twelve month period may be made for cash if the proceeds of each such excess sale or disposition (net of taxes thereon) are fully utilized in the acquisition of Permitted Assets and/or applied to the repayment of Permitted Debt, in each case within 365 days from the date of such sale or disposition;

(e) any Subsidiary of Holdings may (i) engage in Code §1031 like-kind exchanges with respect to Undeveloped Land, and (ii) sell, lease, transfer or otherwise dispose of Undeveloped Land to (A) any Subsidiary of Holdings, (B) a Person which is not (and after giving effect thereto will not be) a Subsidiary of a Borrower, solely in exchange for an Equity Interest in such Person (unless at the time thereof the intention was that such Person would sell such land in its undeveloped state or that any proceeds would be received on or with respect to such Equity Interest prior to the time such land is developed for commercial or residential purposes), or (C) Third Parties; *provided* that if in any twelve month period the aggregate fair market value of Undeveloped Land which is sold, leased, transferred or otherwise disposed of pursuant to this **clause (C)**, is greater than \$100,000,000, then, within 365 days from the date of each sale, lease, transfer or other disposition which resulted in the \$100,000,000 threshold being exceeded, an amount equal to such excess (net of taxes thereon) shall be fully utilized in the acquisition of Permitted Assets and/or applied to the repayment of Permitted Debt; and

(f) any Borrower may merge or consolidate with another corporation or other Person if (i) such Borrower will be the continuing or surviving entity and (ii) no Default would exist immediately after giving effect to such merger or consolidation.

The foregoing **Section 7.04** shall not prohibit dispositions of margin stock (within the meaning of Regulation U of the FRB) that is held as treasury stock by Holdings.

7.05 Subsidiary Debt

. Holdings shall not permit any Subsidiary (other than the Company) to incur, guarantee or otherwise become liable with respect to any Unsecured Debt, other than Unsecured Debt under a Principal Credit Facility to the extent such Subsidiary becomes an Additional Guarantor in accordance with **Section 6.07(a)**.

7.06 Transactions with Holders of Partnership or Other Equity Interests

. Holdings shall not, and shall not permit any Subsidiary to, directly or indirectly, purchase, acquire or lease any property from, or sell, transfer or lease any property to, or otherwise deal with, in the ordinary course of business or otherwise (a) any Affiliate (other than in the capacity of an employee, director or officer), or (b) any Person owning, beneficially or of record, directly or indirectly, 5% or more of the outstanding voting equity of Holdings, A&B, the Company or any other Subsidiary or any executive officer (as such term is defined under the Securities Exchange Act of 1934) of Holdings, A&B, the Company or any other Subsidiary (other than in such Person's capacity as an employee); *provided, however*, that such acts and transactions may be performed or engaged in if (i) they are entered into upon terms no less favorable to Holdings, A&B, such Borrower or such Subsidiary than if no such relationship described in **clauses (a) or (b)** above existed and such acts or transactions are otherwise permitted by this Agreement, (ii) they are acts and transactions in which the only consideration given by Holdings or any of its Subsidiaries is the issuance by Holdings or A&B of its capital stock, (iii) they are between or among Holdings and/or any of its Subsidiaries, or (iv) they are otherwise permitted under **Section 7.09**.

7.07 Use of Proceeds

. No Borrower shall use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose in violation of Regulation U of the FRB.

7.08 Transfer of Assets to Subsidiaries

. Holdings shall not, and shall not permit any Borrower to, transfer (other than in the ordinary course of business or with respect to similarly situated real estate companies) any assets to a Subsidiary for the sole purpose of improving the credit position of such Subsidiary in connection with a financing transaction, except that this restriction shall not apply to any asset the financing of which constitutes Non-Recourse Debt.

7.09 Restricted Payments

. Holdings covenants that it will not declare or pay any dividend or other distribution on any class of its capital stock or other Equity Interests, redeem or repurchase any such interests or make any other distribution on account of any such interests (all of the foregoing being "**Restricted Payments**") except that Holdings may make (a) minimum dividends required to maintain Holdings' status as a REIT under the Code and to avoid the payment of any income tax or excise tax by Holdings, (b) the earnings and profits purge dividend required to be made by applicable law in connection with the REIT conversion and (c) other Restricted Payments in any amount so long as (i) no Default resulting from a failure to comply with **Section 6.01(a)**, **6.01(b)** or **6.01(c)** or Event of Default shall then exist or would exist after giving effect to any such Restricted Payment and (ii) any such Restricted Payment will not violate any applicable law or regulation.

7.10 Sanctions

. No Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Sanctioned Person, to fund any activities of or business with any Sanctioned Person, or in any Designated Jurisdiction, in each case, in violation of applicable Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, the Agent, L/C Issuer, or otherwise) of Sanctions.

7.11 Anti-Corruption Laws

. No Loan Party shall, nor shall it permit any Subsidiary to, directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 or other similar anticorruption legislation in other jurisdictions.

7.12 Additional Agreements

. (a) Holdings shall not form or permit to exist at any such time any direct Subsidiary of Holdings (other than A&B); and (b) A&B shall not form or permit to exist at any such time any direct Subsidiary of A&B (other than the Company or any Series thereof).

VIII. EVENTS OF DEFAULT AND REMEDIES.

8.01 Events of Default

. Any of the following shall constitute an Event of Default:

(a) **Non-Payment.** Any Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein or in any other Loan Document, any amount of principal of any Loan or any L/C Obligation, or (ii) within five days after the same becomes due, any interest on any Loan or on any L/C Obligation, any fee due hereunder or any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants.** Any Borrower or any other Loan Party fails to perform or observe any agreement contained in (i) *Sections 6.01(a), (b) or (c)*, and such failure continues for 10 Business Days or (ii) *Section 6.03, Section 6.06 or Article VII* hereof;

(c) **Other Defaults.** Any Borrower or any other Loan Party fails to perform or observe any other covenant or agreement (not specified in *subsection (a) or (b)* above) contained in any Loan Document on its part to be performed or observed and such failure shall not be remedied within 30 days after any Responsible Officer obtaining actual knowledge thereof; or

(d) **Representations and Warranties.** Any representation or warranty made by any Loan Party herein or in any other Loan Document or by any Loan Party or any of its officers in any writing furnished in connection with or pursuant to this Agreement shall be false or misleading in any material respect on the date as of which made; *provided* that to the extent that such breach of representation or warranty relates to *clause (c)* of the definition of Material Adverse Effect, such breach of representation or warranty shall only constitute an Event of

Default under this **subsection (d)** if such Loan Party knowingly breached such representation or warranty; or

(e) **Cross-Default.** Any Loan Party or any Subsidiary (i) defaults in any payment of principal of, or premium or interest on, any obligation (v) for money borrowed, (w) under any conditional sale or other title retention agreement, (x) issued or assumed as full or partial payment for property whether or not secured by a purchase money mortgage, (y) under notes payable or drafts accepted representing extensions of credit or (z) Guarantees of the foregoing, in each case, constituting Recourse Debt (other than the Obligations), after the expiration of any period of grace provided with respect thereto, or any Loan Party or any Subsidiary fails to perform or observe any other agreement, term or condition contained in any agreement evidencing Recourse Debt (or any other event thereunder or under any such agreement occurs and is continuing), after the expiration of any grace period, and the effect of such payment default or other failure or event is to cause, or to permit the holder or holders of such obligation to cause, with the giving of notice if required, such obligation to be demanded or to become due (or such obligation becomes subject to required repurchase or an offer to repurchase by any Loan Party or any Subsidiary) prior to any stated maturity; *provided* that the aggregate amount of all obligations as to which such a payment default or other failure or event shall occur exceeds \$30,000,000 at the time of such default or other failure or event; or (ii) defaults in any payment of principal of, or premium or interest on, any obligation (v) for money borrowed, (w) under any conditional sale or other title retention agreement, (x) issued or assumed as full or partial payment for property whether or not secured by a purchase money mortgage, (y) under notes payable or drafts accepted representing extensions of credit or (z) Guarantees of the foregoing, in each case, constituting Non-Recourse Debt, after the expiration of any period of grace provided with respect thereto, or any Loan Party or any Subsidiary fails to perform or observe any other agreement, term or condition contained in any agreement evidencing Non-Recourse Debt (or any other event thereunder or under any such agreement occurs and is continuing), after the expiration of any grace period, and the effect of such payment default or other failure or event is to cause, or to permit the holder or holders of such obligation to cause, with the giving of notice if required, such obligation to be demanded or to become due (or such obligation becomes subject to required repurchase or an offer to repurchase by any Loan Party or any Subsidiary) prior to any stated maturity; *provided* that the aggregate amount of all obligations as to which such a payment default or other failure or event shall occur exceeds \$100,000,000 at the time of such default or other failure or event; *provided, further*, that this **Section 8.01(e)** shall not apply to (1) secured obligations that become due as a result of the voluntary sale or transfer of the property or assets securing such obligations, if such sale or transfer is permitted under the terms of such obligations and such obligations are paid at or prior to the time they become due (or within any applicable grace period) as a result of such transaction, (2) any obligations that become due as a result of a refinancing thereof, (3) obligations held in whole or in part by any Lender or any of their respective affiliates (within the meaning of Regulation U of the FRB) that become due or enables or permits the holders thereof to cause such obligations to become due solely as a result of a breach of terms governing the sale, pledge or disposal of margin stock (within the meaning of Regulation U of the FRB) and would cause this Agreement or any Loan to be subject to the margin requirements or any other restriction under Regulation U of the FRB or (4) any obligations that are mandatorily prepayable prior to the scheduled maturity thereof with the proceeds of the issuance of Equity Interests, the incurrence of other Indebtedness or the sale or other disposition of any assets, so long as such obligations that have become due are so prepaid with the net proceeds required to be used to prepay such obligations when due (or within any applicable grace period) and such event shall not have otherwise resulted in an event of default with respect to such obligations; or

(f) **Insolvency Proceedings, Etc.**

(i) Any Loan Party or any Significant Subsidiary makes an assignment for the benefit of creditors or is generally not paying its debts as such debts become due; or

(ii) any decree or order for relief in respect of any Loan Party or any Significant Subsidiary is entered under any Debtor Relief Laws of any jurisdiction; or

(iii) any Loan Party or any Significant Subsidiary petitions or applies to any tribunal for, or consents to, the appointment of, or taking possession by, a trustee, receiver, custodian, liquidator or similar official of any Loan Party or any such Significant Subsidiary, or of any substantial part of the assets of any Loan Party or any such Significant Subsidiary, or commences a voluntary case under the Bankruptcy Code of the United States or any proceedings (other than proceedings for the voluntary liquidation and dissolution of a Significant Subsidiary) relating to any Loan Party or any Significant Subsidiary under any other Debtor Relief Laws; or

(iv) any petition or application of the type described in *clause (iii)* above is filed, or any such proceedings are commenced, against any Loan Party or any Significant Subsidiary and such Loan Party or such Significant Subsidiary by any act indicates its approval thereof, consent thereto or acquiescence therein, or an order, judgment or decree is entered appointing any such trustee, receiver, custodian, liquidator or similar official, or approving the petition in any such proceedings, and such order, judgment or decree remains unstayed and in effect for more than 45 days; or

(g) **Dissolution, Etc.**

(i) Any order, judgment or decree is entered in any proceedings against any Loan Party or any Significant Subsidiary decreeing the dissolution of such Loan Party or such Significant Subsidiary and such order, judgment or decree remains unstayed and in effect for more than 45 days; or

(ii) any order, judgment or decree is entered in any proceedings against any Loan Party or any Significant Subsidiary decreeing a split-up of such Loan Party or such Significant Subsidiary which requires the divestiture of (A) assets representing a substantial part, or the stock of, or other ownership interest in, a Significant Subsidiary whose assets represent a substantial part of Consolidated Total Assets or (B) assets or the stock of or other ownership interest in a Significant Subsidiary that has contributed a substantial part of Consolidated Net Income for any of the three fiscal years then most recently ended, and such order, judgment or decree remains unstayed and in effect for more than 45 days; or

(h) **ERISA.** (i) Any Plan (other than a Multiemployer Plan) shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under *Section 412* of the Code, (ii) a notice of intent to terminate any Plan (other than a Multiemployer Plan) shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA *Section 4042* to terminate or appoint a trustee to administer any Plan (other than a Multiemployer Plan) or the PBGC shall have notified any Borrower or any ERISA Affiliate that a Plan (other than a Multiemployer Plan) may become a subject of such proceedings, (iii) the aggregate amount under all Plans (other than a Multiemployer Plan) of the

fair market value of the assets (within the meaning of *Section 303* of ERISA) is less than 70% of the “*Funding Target*” (within the meaning of *Section 303* of ERISA), (iv) any Borrower or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to *Title I or IV* of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) any Borrower or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) any Loan Party or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of any Loan Party or any Subsidiary thereunder; and any such event or events described in **clauses (i)** through **(vi)** above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect of the type described in **clause (a)** or **(b)** of the definition thereof; or

(i) **Judgments.** Any judgment or decree for the payment of money in the amount of \$30,000,000 or more (to the extent not paid or covered by insurance) shall be entered against any Loan Party or any of its Subsidiaries and such judgment or decree shall not have been vacated, discharged or stayed or bonded pending appeal within 60 days from the entry thereof; or

(j) **Invalidity of Loan Documents.** Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) **Change of Control.** There occurs any Change of Control.

8.02 Remedies Upon Event of Default

. If any Event of Default occurs and is continuing, the Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by each Borrower;

(c) require that the Borrowers Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the

obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Agent or any Lender.

8.03 Application of Funds

. After the exercise of remedies provided for in **Section 8.02** (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to **Section 8.02**), any amounts received on account of the Obligations shall, subject to the provisions of **Sections 2.15** and **2.17**, be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under **Article III**) payable to the Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under **Article III**), ratably among them in proportion to the respective amounts described in this **clause Second** payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this **clause Third** payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings and obligations under Swap Agreements constituting part of the Obligations, ratably among the Lenders, the L/C Issuer and holders of such Swap Agreement in proportion to the respective amounts described in this **clause Fourth** held by them;

Fifth, to the Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers pursuant to **Sections 2.03** and **2.15**; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by law;

provided that Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth in this **Section 8.03**.

Subject to **Sections 2.03(c)** and **2.15**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to **clause Fifth** above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

IX. AGENT.

9.01 Appointment and Authority

. Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Agent hereunder and under the other Loan Documents and authorizes the Agent to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this *Article* are solely for the benefit of the Agent, the Lenders and the L/C Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender

. The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions

. The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), *provided* that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower, its Subsidiaries or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity; and

(d) the Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Institutions. Without limiting the generality of the foregoing, the Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or Participant or prospective Lender or Participant is a Disqualified Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Institution.

The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Sections 10.01** and **8.02**) or (ii) in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default in writing is given to the Agent by a Borrower, a Lender or the L/C Issuer.

The Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in **Article IV** or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

9.04 Reliance by the Agent

. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties

. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more subagents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this **Article** shall apply to any such sub-agent and to the Related Parties of the Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Agent. The Agent may consult with legal counsel (who may be counsel for the

Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.06 Resignation of the Agent.

(a) The Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with, so long as no Event of Default under **Section 8.01(a), 8.01(f) or 8.01(g)** has occurred and is continuing, the consent of the Company (such consent not to be unreasonably withheld or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring the Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “**Resignation Effective Date**”), then the retiring the Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor the Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as the Agent is a Defaulting Lender pursuant to **clause (d)** of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Company and such Person remove such Person as the Agent and, with, so long as no Event of Default under **Section 8.01(a), 8.01(f) or 8.01(g)** has occurred and is continuing, the consent of the Company (such consent not to be unreasonably withheld or delayed), appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “**Removal Effective Date**”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (i) the retiring or removed the Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents, in each case solely in its capacity as the Agent and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed the Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor the Agent as provided for above. Upon the acceptance of a successor’s appointment as the Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) the Agent (other than as provided in **Section 3.01(g)** and other than any rights to indemnity payments or other amounts owed to the retiring or removed the Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed the Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this **Section**). The fees payable by the Borrowers to a successor the Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed the Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this **Article** and **Section 10.04** shall continue in effect for the benefit of such retiring or removed the Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed the Agent was acting as the Agent.

(d) Any resignation by Bank of America as the Agent pursuant to this **Section** shall also constitute its resignation as L/C Issuer. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make BaseDaily SOFR Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.03(c)**. Upon the appointment by the Borrowers of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of its respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on the Agent and Other Lenders

. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc

. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers or other titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Agent, a Lender or the L/C Issuer hereunder.

9.09 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent, the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class

exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent, the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that:

(i) none of the Agent, the Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the

Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Agent, the Arrangers or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Agent and the Arrangers hereby inform the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

9.10 Recovery of Erroneous Payments

. Without limitation of any other provision in this Agreement, if at any time the Agent makes a payment hereunder in error to any Lender or the L/C Issuer (the "**Credit Party**"), whether or not in respect of an Obligation due and owing by the Borrowers at such time, where such payment is a Rescindable Amount, then in any such event, each Credit Party receiving a Rescindable Amount severally agrees to repay to the Agent forthwith on demand the Rescindable Amount received by such Credit Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate and a rate determined by the Agent in accordance with banking industry rules on interbank compensation. Each Credit Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Agent shall inform each Credit Party promptly upon determining that any payment made to such Credit Party comprised, in whole or in part, a Rescindable Amount.

9.11 The Agent May File Proofs of Claim

. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on any Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and

unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Agent under **Sections 2.03(i), 2.03(j), 2.09 and 10.04**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under **Sections 2.09 and 10.04**.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

9.12 Guaranty Matters

. Each Lender and the L/C Issuer agree that each of Grace and Grace Holdings shall be automatically released from their respective obligations under the Guaranty upon the consummation of the sale of all or substantially all of the business of Grace and its Subsidiaries to a Person other than Holdings or a Subsidiary or other Affiliate of Holdings in a transaction permitted under the terms of this Agreement, whether such sale is structured as the sale of all or substantially all of the assets of Grace and its Subsidiaries or as a sale of all or substantially all of the Equity Interests of Grace or of Grace Holdings, provided that: (i) each of Grace and Grace Holdings is prior to or simultaneously with its release from the Guaranty released from any and all other Guarantees under all other Principal Credit Facilities; (ii) no Default or Event of Default would exist immediately before or after giving effect to such release and (iii) if any lender other than the Lenders and L/C Issuers receives any consideration in connection with the release of Grace or Grace Holdings from any Guarantee under any other Principal Credit Facility, then the Lenders and L/C Issuers shall be paid an amount equal to their ratable share of such consideration concurrently therewith.

X. MISCELLANEOUS.

10.01 Amendments, Etc

. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided*, however, that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 8.02**) without the written consent of such Lender;

(b) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to any Lender hereunder or under any other Loan Document without the written consent of such Lender;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or Unreimbursed Amounts under Letters of Credit, or (subject to **clause (iii)** of the second proviso to this **Section 10.01**) any fees or other amounts payable hereunder or under any other Loan Document to any Lender without the written consent of such Lender; *provided, however*, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of “**Default Rate**” or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate and (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(d) without the written consent of each Lender, (i) change **Section 2.13, Section 8.03** or any other provision hereof in a manner that would have the effect of altering the ratable reduction of Commitments or the pro rata sharing of payments otherwise required hereunder; (ii) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation and (iii) release, or have the effect of releasing, all or substantially all of the value of the Obligations

(e) except as otherwise expressly provided herein, release or have the effect of releasing all or substantially all of the value of the Guaranty without the written consent of each Lender; or

(f) change any provision of this **Section** or the definition of “**Required Lenders**” without the written consent of each Lender;

and, *provided, further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above, affect the rights or duties of the Agent under this Agreement or any other Loan Document; and (iii) the Fee Letters may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding the foregoing, the Borrowers may, by written notice to the Agent from time to time, make one or more offers (each, a “**Loan Modification Offer**”) to all the Lenders to make one or

more amendments or modifications to (A) allow the maturity of the Committed Loans of the accepting Lenders to be extended and (B) increase the Applicable Rate and/or fees payable with respect to the Committed Loans and Commitments of the accepting Lenders (“**Permitted Amendments**”) pursuant to procedures reasonably specified by the Agent and reasonably acceptable to the Borrowers. Such notice shall set forth (i) the terms and conditions of the requested Permitted Amendment and (ii) the date on which such Permitted Amendment is requested to become effective. Permitted Amendments shall become effective only with respect to the Committed Loans and/or Commitments of the Lenders that accept the applicable Loan Modification Offer (such Lenders, the “**Accepting Lenders**”) and, in the case of any Accepting Lender, only with respect to such Lender’s Committed Loans and/or Commitments as to which such Lender’s acceptance has been made. Each Borrower, each other Loan Party and each Accepting Lender shall execute and deliver to the Agent a Loan Modification Agreement and such other documentation as the Agent shall reasonably specify to evidence the acceptance of the Permitted Amendments and the terms and conditions thereof, and the Loan Parties shall also deliver such resolutions, opinions and other documents as reasonably requested by the Agent. The Agent shall promptly notify each Lender as to the effectiveness of each Loan Modification Agreement. Each of the parties hereto hereby agrees that (1) upon the effectiveness of any Loan Modification Agreement, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Permitted Amendment evidenced thereby and only with respect to the Committed Loans and Commitments of the Accepting Lenders as to which such Lenders’ acceptance has been made and (2) any applicable Lender who is not an Accepting Lender may be replaced by the Borrowers in accordance with **Section 10.13**.

In addition, notwithstanding anything to the contrary contained in this **Section 10.01** or any other Loan Document, if the Agent and the Borrowers have jointly identified an obvious error or any error or omission of a technical nature, in each case, in any provision of the Loan Documents, then the Agent and the Borrowers shall be permitted to amend such provision without the consent of any Lender if such amendment, supplement or waiver is delivered in order to cure ambiguities, omissions, mistakes or defects in such respective Loan Document and so long as such amendment, supplement or waiver does not adversely affect the rights of any Lender.

10.02 Notices; Effectiveness; Electronic Communication.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Borrower or any other Loan Party, the Agent or the L/C Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on **Schedule 10.02**; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and

other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in **subsection (b)** below, shall be effective as provided in such **subsection (b)**.

(b) **Electronic Communications.** Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging and Internet or intranet websites) pursuant to procedures approved by the Agent, *provided* that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to **Article II** if such Lender or the L/C Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or any Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Agent otherwise prescribes, (i) notices and other communications sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing **clause (i)** of notification that such notice or communication is available and identifying the website address therefor; *provided* that, for both **clauses (i)** and **(ii)**, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) **The Platform.** THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to any Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Borrower's, any Loan Party's or the Agent's transmission of Borrower Materials through the Platform, any other electronic platform or electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expense are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party or any of its Related Parties.

(d) **Change of Address, Etc.** Each of the Borrowers, the Agent and the L/C Issuer and may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the

Company, the Agent and the L/C Issuer. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrowers or their securities for purposes of United States Federal or state securities laws.

(e) **Reliance by the Agent, L/C Issuer and Lenders.** The Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Letter of Credit Applications) purportedly given by or on behalf of a Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Each Borrower shall indemnify the Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of such Borrower, except to the extent such losses, costs, expenses and liabilities resulted from the gross negligence or willful misconduct of such Person. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies

. No failure by any Lender, the L/C Issuer or the Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with **Section 8.02** for the benefit of all the Lenders and the L/C Issuer; *provided, however*, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as the Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with **Section 10.08** (subject to the terms of **Section 2.13**), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided, further*, that if at any time there is no Person acting as the Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to **Section 8.02** and (ii) in addition to the matters set forth in *clauses (b), (c) and (d)* of the preceding *proviso* and subject to **Section 2.13**, any

Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver.

(a) **Costs and Expenses.** The Borrowers shall pay (i) except as provided in **Section 10.06(b)(iv)**, all reasonable and documented out-of-pocket expenses incurred by the Agent and its Affiliates (including the reasonable fees, charges and disbursements of Haynes and Boone, LLP, as counsel for the Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out-of-pocket expenses incurred by the Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Agent, any Lender or the L/C Issuer), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this **Section**, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit; *provided, however*, that this **Section 10.04(a)** shall not apply with respect to Taxes.

(b) **Indemnification by the Borrowers.** Each Borrower shall indemnify the Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including, the fees, charges and disbursements of one primary legal counsel to the Agent, the Arrangers and their Affiliates and the Lenders and, if required, one local counsel in each relevant jurisdiction (and, in the case of an actual or perceived conflict of interest where the Indemnitee informs the Company of such conflict and retains its own counsel, of one additional counsel for each such affected Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including any Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) result from the gross negligence, bad faith or willful misconduct of such Indemnitee, (y) result from a claim brought by any Borrower against an Indemnitee for breach in

bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (z) result from any dispute solely among the Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as the Agent, L/C Issuer, Arranger or any similar role under this Agreement or any other Loan Document and other than any claims arising out of any act or omission of Holdings or any of its Subsidiaries. Without limiting the provisions of **Section 3.01(c)**, this **Section 10.04(b)** shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) **Reimbursement by Lenders.** To the extent that any Borrower for any reason fails to indefeasibly pay any amount required under **subsection (a)** or **(b)** of this **Section** to be paid by it to the Agent (or any sub-agent thereof), the L/C Issuer, or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent), the L/C Issuer, or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the outstanding Loans, unfunded Commitments and participation interests in L/C Obligations of all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent), the L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of **Section 2.12(d)**.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by applicable law, neither any Loan Party nor any Indemnitee shall assert, and each party hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee or any Loan Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof (except that an Indemnitee may assert, and does not waive, a claim against any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party). No Indemnitee referred to in **subsection (b)** above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee.

(e) **Payments.** All amounts due under this **Section** shall be payable not later than ten Business Days after written demand therefor.

(f) **Survival.** The agreements in this **Section** and the indemnity provisions of **Section 10.02(e)** shall survive the resignation of the Agent and the L/C Issuer, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside

. To the extent that any payment by or on behalf of any Borrower is made to the Agent, the L/C Issuer or any Lender, or the Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate *per annum* equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under **clause (b)** of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither any Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of **subsection (b)** of this **Section**, (ii) by way of participation in accordance with the provisions of **subsection (d)** of this **Section**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **subsection (f)** of this **Section** (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **subsection (d)** of this **Section** and, to the extent expressly contemplated hereby, the Related Parties of each of the Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this **subsection (b)**, participations in L/C Obligations) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) **Minimum Amounts.**

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in **paragraph (b)(i)(B)** of this **Section** in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in *subsection (b)(i)(A)* of this *Section*, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000 unless each of the Agent and, so long as no Event of Default has occurred and is continuing, the Company otherwise consent (each such consent not to be unreasonably withheld or delayed).

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by *subsection (b)(i)(B)* of this *Section* and, in addition:

(A) the consent of the Company (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Company shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Agent within five Business Days after having received notice thereof;

(B) the consent of the Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender;

(C) the consent of the L/C Issuers (such consent not to be unreasonably withheld or delayed) shall be required for any assignment.

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; *provided, however*, that the Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. Such processing and recordation fees, together with the costs and expenses of the Agent incurred in connection with the execution and delivery of such Assignment and Assumption, shall be paid by either the assignor or the assignee. The assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons.** No such assignment shall be made to (A) any Borrower or any of its Subsidiaries or Affiliates, (B) a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person) (C) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this *clause (C)* or (D) so long as no Default exists, a Disqualified

Institution unless consented to by the Company (such consent not to be unreasonably withheld or delayed).

(vi) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Agent, the applicable *pro rata* share of Committed Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full *pro rata* share of all Committed Loans and participations in Letters of Credit in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Agent pursuant to **subsection (c)** of this **Section**, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Sections 3.01, 3.04, 3.05, and 10.04** with respect to facts and circumstances occurring prior to the effective date of such assignment; *provided* that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, and upon receipt of the original Note from the assignor marked "**Cancelled**," each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **subsection (d)** of this **Section**.

(c) **Register.** The Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and the Borrowers, the Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all

purposes of this Agreement. The Register shall be available for inspection by any Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Agent, sell participations to any Person (other than a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person), a Defaulting Lender or the Borrowers or any of the Borrowers' Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain the holder of its Loans and owner of its participations or other interest in any Letter of Credit for all purposes hereunder, (iii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iv) the Borrowers, the Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 10.04(c)** without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to **Section 10.01** that affects such Participant. Each Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.01, 3.04 and 3.05** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **subsection (b)** of this **Section** (it being understood that the documentation required under **Section 3.01(e)** shall be delivered to the Lender who sells the participation); *provided* that such Participant (A) agrees to be subject to the provisions of **Sections 3.06 and 10.13** as if it were an assignee under **paragraph (b)** of this **Section** and (B) shall not be entitled to receive any greater payment under **Sections 3.01 or 3.04**, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of **Section 3.06** with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 10.08** as though it were a Lender; *provided* that such Participant agrees to be subject to **Section 2.13** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under **Section 5f.103-1(c)** of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement

notwithstanding any notice to the contrary. For the avoidance of doubt, the Agent (in its capacity as the Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **Resignation as L/C Issuer after Assignment.** Notwithstanding anything to the contrary contained herein, if at any time a Lender acting as L/C Issuer assigns all of its Commitment and Loans pursuant to **subsection (b)** above, such Lender may, upon 30 days' notice to the Company and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, the Borrowers shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; *provided, however*, that no failure by the Borrowers to appoint any such successor shall affect the resignation of the applicable Lender as L/C Issuer, as the case may be. Any such appointment of a successor L/C Issuer by the Borrowers pursuant to this **Section 10.06** shall not become effective until acceptance of the appointment by the successor L/C Issuer. If a Lender resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make **BaseDaily SOFR** Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.03(c)**). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the applicable resigning L/C Issuer to effectively assume the obligations of such L/C Issuer with respect to such Letters of Credit.

10.07 Treatment of Certain Information; Confidentiality

. Each of the Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), to the extent required by applicable laws or regulations or by any subpoena or similar legal process, to any other party hereto, (c) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (d) subject to an agreement containing provisions substantially the same as those of this **Section**, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement (or any Eligible Assignee invited to be a Lender pursuant to **Section 2.14**) or (ii) any actual or prospective counterparty (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to a Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating a Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of a Borrower or (i) to the

extent such Information (x) becomes publicly available other than as a result of a breach of this **Section** or (y) becomes available to the Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than a Borrower (only to the extent that such availability of information is not to the Agent, such Lender, or such L/C Issuer's knowledge in breach of the confidentiality requirements provided herein).

For purposes of this **Section**, "**Information**" means all information received from any Borrower or any Subsidiary (or any Affiliate of a Borrower or any Related Party of a Borrower or any such Subsidiary or Affiliate) relating to any Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by any Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this **Section** shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning a Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable law, including Federal and state securities laws.

10.08 Right of Setoff

. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of any Borrower or any other Loan Party against any and all of the obligations of such Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, the L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of **Section 2.17** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this **Section** are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective affiliates may have. Each Lender and the L/C Issuer agrees to notify the Company and the Agent promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation

. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "**Maximum Rate**"). If the Agent or any Lender shall receive interest in an amount

that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the applicable Borrower. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness; Amendment and Restatement

(a) This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Agent or the L/C Issuer constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in **Section 4.01**, this Agreement shall become effective when it shall have been executed by the Agent and when the Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by fax transmission or e-mail transmission (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such fax transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

(b) The parties to the Existing Credit Agreement each hereby agree that, at such time as this Agreement shall have become effective pursuant to the terms of **Section 4.01**, (i) the Obligations hereunder represent the amendment, restatement, extension, and consolidation of the "Obligations" under the Original Credit Agreement, (ii) the Existing Credit Agreement automatically shall be deemed amended and restated in its entirety by this Agreement, (iii) the Commitments under the Existing Credit Agreement and as defined therein automatically shall be replaced with the Commitments hereunder, and (iv) the Agent shall reallocate the Commitments hereunder to reflect the terms hereof. This Agreement is not a novation of the Existing Credit Agreement.

10.11 Survival of Representations and Warranties

. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12 Severability

. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this **Section 10.12**, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Agent or the L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders

. If the Borrowers are entitled to replace a Lender pursuant to the provisions of **Section 3.06**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, or if a Lender is not an Accepting Lender under **Section 10.01**, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, **Section 10.06**), all of its interests, rights (other than its existing rights to payments pursuant to **Sections 3.01** and **3.04**) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(a) the Borrowers shall have paid to the Agent the assignment fee (if any) specified in **Section 10.06(b)**;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under **Section 3.05**) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under **Section 3.04** or payments required to be made pursuant to **Section 3.01**, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 **Governing Law; Jurisdiction; Etc.**

(a) **GOVERNING LAW.** THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) **SUBMISSION TO JURISDICTION.** EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST AGENT, ANY LENDER, THE L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN **PARAGRAPH (b)** OF THIS **SECTION**. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN **SECTION 10.02**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY

PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Waiver of Jury Trial

. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (a) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (b) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility

. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower and each other Loan Party acknowledges and agrees that: (i)(A) the arranging and other services regarding this Agreement provided by the Agent, the Arrangers and the Lenders are arm's-length commercial transactions between each Borrower, each other Loan Party and their respective Subsidiaries and Affiliates, on the one hand, and the Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Borrowers and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii)(A) the Agent, each Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Borrower, any other Loan Party or any of their respective Subsidiaries and Affiliates, or any other Person and (B) neither the Agent, any Arranger nor any Lender has any obligation to any Borrower, any other Loan Party or any of their respective Subsidiaries and Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, the other Loan Parties and their respective Subsidiaries and Affiliates, and neither the Agent, any Arranger nor any Lender has any obligation to disclose any of such interests to any Borrower, any other Loan Party or any of their respective Subsidiaries and Affiliates. To the fullest extent permitted by law, each of the Borrowers and each other Loan Party hereby waives and releases any claims that it may have against the Agent, the Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 Electronic Execution of Assignments and Certain Other Documents.

(a) The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including Assignment and Assumptions, amendments or other modifications, Loan Notices, waivers or consents) are deemed to include Electronic Signatures,

the electronic matching of assignment terms and contract formations on electronic platforms approved by the Agent, and any other Electronic Record.

(b) This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “**Communication**”), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on each such Loan Party to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered or a paper-based recordkeeping system was used, as the case may be. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, use or acceptance by the Agent and each of the Secured Parties of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Agent and each of the Secured Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“**Electronic Copy**”), which shall be deemed created in the ordinary course of the such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Agent has agreed to accept such Electronic Signature, the Agent and each of the Secured Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (ii) upon the request of the Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “**Electronic Record**” and “**Electronic Signature**” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

10.18 USA PATRIOT Act

. Each Lender that is subject to the Act (as hereinafter defined) and the Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act (*Title III* of Pub. L. 107-56 (signed into law October 26, 2001)) (the “**Act**”), it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the Loan Parties and other information that will allow such Lender or the Agent, as applicable, to identify the Loan Parties in accordance with the Act. The Borrowers shall, promptly following a request by the Agent or any Lender, provide all documentation and other information that the Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

10.19 Acknowledgement and Consent to Bail-In of Affected Financial Institutions

. Solely to the extent any Lender or L/C Issuer that is an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other

agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender or L/C Issuer that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or L/C Issuer that is an Affected Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

10.20 Acknowledgement Regarding Any Supported QFCs

. To the extent that this Agreement or any other Loan Document provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that

rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this *Section 10.20*, the following terms have the following meanings:

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“*QFC*” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

XI. GUARANTY.

11.01 Guaranty

. Each Guarantor hereby guarantees to each Lender, each L/C Issuer and each other holder of the Obligations as hereinafter provided, as primary obligor and not as surety, the prompt payment of the Obligations (for the avoidance of doubt excluding any Excluded Swap Obligations) in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. Each Guarantor hereby further agrees that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), such Guarantor will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents or the other documents relating to the Obligations, the obligations of the Guarantors under this Guaranty and the other Loan Documents shall not exceed an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under applicable Debtor Relief Laws.

11.02 Obligations Unconditional

. The obligations of the Guarantors under this Guaranty are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents or other documents relating to the Obligations, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor (other than payment), it being the intent of this *Section 11.02* that the obligations of the Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Guarantor agrees that it shall have no right of subrogation, indemnity,

reimbursement or contribution against the Borrowers for amounts paid under this Guaranty until such time as the Obligations have been paid in full and the Commitments have expired or terminated. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by Law, the occurrence of any one or more of the following shall not alter or impair the liability of any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of any of the Loan Documents or other documents relating to the Obligations shall be done or omitted;

(c) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents or other documents relating to the Obligations shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(d) any Lien granted to, or in favor of, the Agent or any other holder of the Obligations as security for any of the Obligations shall fail to attach or be perfected; or

(e) any of the Obligations shall be determined to be void or voidable (including, for the benefit of any creditor of a Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of a Guarantor).

With respect to its obligations hereunder, each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Agent or any other holder of the Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents or any other document relating to the Obligations, or against any other Person under any other guarantee of, or security for, any of the Obligations.

11.03 Reinstatement

. The obligations of the Guarantors under this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any Debtor Relief Law or otherwise, and each Guarantor agrees that it will indemnify the Agent and each other holder of the Obligations on demand for all reasonable costs and expenses (including, without limitation, the fees, charges and disbursements of counsel) incurred by the Agent or such holder of the Obligations in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any Debtor Relief Law.

11.04 Certain Additional Waivers

. Each Guarantor agrees that it shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to **Section 11.02**.

11.05 Remedies

. Each Guarantor agrees that, to the fullest extent permitted by Law, as between the Guarantors, on the one hand, and the Agent and the other holders of the Obligations, on the other hand, the Obligations may be declared to be forthwith due and payable as specified in **Section 8.02** (and shall be deemed to have become automatically due and payable in the circumstances specified in **Section 8.02**) for purposes of **Section 11.01** notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Guarantors for purposes of **Section 11.01**.

11.06 Guaranty of Payment; Continuing Guaranty

. The guarantee in this Guaranty is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to the Obligations whenever arising.

11.07 Further Agreements

. Each Guarantor agrees that neither the Agent nor any other holder of the Obligations will have any obligation to investigate the financial condition or affairs of the Borrowers for the benefit of such Guarantor nor to advise such Guarantor of any fact respecting, or any change in, the financial condition or affairs of the Borrowers which might come to the knowledge of the Agent or any holder of the Obligations at any time, whether or not the Agent or such holder of the Obligations knows or believes or has reason to know or believe that any such fact or change is unknown to such Guarantor or might (or does) materially increase the risk of such Guarantor as a Guarantor or might (or would) affect the willingness of such Guarantor to continue as a guarantor with respect to the Obligations.

11.08 Additional Liability of Guarantors

. If any Guarantor is or becomes liable for any indebtedness owing by any Borrower to the Agent or any holder of the Obligations by endorsement or otherwise other than under this Guaranty, such liability shall not be in any manner impaired or reduced hereby but shall have all and the same force and effect it would have had if this Guaranty had not existed and such Guarantor's liability hereunder shall not be in any manner impaired or reduced thereby.

11.09 Keepwell

. Each Loan Party that is a Qualified ECP Guarantor (as hereinafter defined) at the time this Agreement by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under this Guaranty and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this **Section 11.09** voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this **Section 11.09** shall remain in full force and effect until the Guaranteed Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this **Section 11.09** to constitute, and this **Section 11.09** shall be deemed to constitute, a Guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act. For purposes of this **Section 11.09**, "Qualified ECP Guarantor" means, at any time, each Guarantor with total assets exceeding

\$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under §1418 (A)(v)(II) of the Commodity Exchange Act.

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Signature Page(s) Follow(s).*

[FORM OF] COMMITTED LOAN NOTICE

Date: _____, 20__

To: Bank of America, N.A., as the Agent

Ladies and Gentlemen:

Reference is made to that certain **THIRD AMENDED AND RESTATED CREDIT AGREEMENT**, dated as of August 31, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "*Credit Agreement*"; the terms defined therein being used herein as therein defined), among **ALEXANDER & BALDWIN, LLC**, a Delaware limited liability company (the "*Company*"), **ALEXANDER & BALDWIN, LLC, SERIES R** ("*Series R*"), **ALEXANDER & BALDWIN, LLC, SERIES T** ("*Series T*"), **ALEXANDER & BALDWIN, LLC, SERIES M** ("*Series M*") and certain Additional Borrowers from time to time party thereto (together with the Company, Series R, Series T and Series M, each individually, a "*Borrower*" and collectively, the "*Borrowers*"), **ALEXANDER & BALDWIN, INC.**, a Hawaii corporation, **ALEXANDER & BALDWIN INVESTMENTS, LLC**, Delaware limited liability company, **A&B II, LLC**, a Hawaii limited liability company, **GRACE PACIFIC LLC**, a Hawaii limited liability company, the other Guarantors from time to time party thereto, the Lenders from time to time party thereto, **BANK OF AMERICA, N.A.**, as the Agent, and the other parties party thereto.

The undersigned hereby requests (select one):

- ☐ A Borrowing of Committed Loans
- ☐ A conversion or continuation of the following Loan(s):

[describe]

1. On _____ (a Business Day).
2. In the amount of \$_____.
3. Comprised of [Term SOFR Rate Committed Loans][Daily SOFR Rate Loans].

[Type of Committed Loan requested or, for conversions, type of Loan to which the Loan described above is requested to be converted]

4. For Term SOFR Rate Committed Loans: with an Interest Period of [____ months]¹.

The Committed Borrowing, if any, requested herein complies with the provisos to the first sentence of *Section 2.01* of the Credit Agreement.

**[Remainder of Page Intentionally Left Blank;
Signature Page(s) Follow(s).]**

¹ One, three or six, pursuant to *Section 1.01* of the Credit Agreement.

[APPLICABLE BORROWER]

By: _____
Name:
Title:]

[FORM OF] NOTICE OF LOAN PREPAYMENT

TO: Bank of America, N.A., as the Agent

RE: **THIRD AMENDED AND RESTATED CREDIT AGREEMENT**, dated as of August 31, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**," the terms defined therein being used herein as therein defined), among **ALEXANDER & BALDWIN, LLC**, a Delaware limited liability company (the "**Company**"), **ALEXANDER & BALDWIN, LLC, SERIES R ("Series R")**, **ALEXANDER & BALDWIN, LLC, SERIES T ("Series T")**, **ALEXANDER & BALDWIN, LLC, SERIES M ("Series M")** and certain Additional Borrowers from time to time party thereto (together with the Company, Series R, Series T and Series M, each individually, a "**Borrower**" and collectively, the "**Borrowers**"), **ALEXANDER & BALDWIN, INC.**, a Hawaii corporation, **ALEXANDER & BALDWIN INVESTMENTS, LLC**, Delaware limited liability company, **A&B II, LLC**, a Hawaii limited liability company, **GRACE PACIFIC LLC**, a Hawaii limited liability company, the other Guarantors from time to time party thereto, the Lenders from time to time party thereto, **BANK OF AMERICA, N.A.**, as the Agent, and the other parties party thereto. Capitalized terms used but not otherwise defined herein have the meanings provided in the Credit Agreement.

DATE: [_____, 20__]²

The undersigned Borrower hereby notifies the Agent that on _____, 20__ pursuant to the terms of *Section 2.05* of the Credit Agreement, such Borrower intends to prepay/repay the following Loans as more specifically set forth below:

☐ Optional prepayment of Committed Loans in the following amount(s):

☐ Term SOFR Rate Committed Loans: \$_____³

Applicable Interest Period: _____

☐ Daily SOFR Rate Loans: \$_____⁴

☐ Base Rate Loans: \$_____⁵

Delivery of an executed counterpart of a signature page of this notice by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this notice.

² Three Business Days prior to the date of prepayment of Term SOFR Rate Committed Loans, one Business Day prior to the date of prepayment of Base Rate Loans.

³ Any prepayment of Term SOFR Rate Committed Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof (or if less, the entire principal amount thereof outstanding).

⁴ Any prepayment of Daily SOFR Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$1,000,000 in excess thereof (or if less, the entire principal amount thereof outstanding).

⁵ Any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or if less, the entire principal amount thereof outstanding).

*[Remainder of Page Intentionally Left Blank;
Signature Page(s) Follow(s).]*

[APPLICABLE BORROWER]

By: _____
Name:
Title:]

CERTIFICATION

I, Christopher J. Benjamin, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Alexander & Baldwin, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By /s/ Christopher J. Benjamin

Christopher J. Benjamin

Chief Executive Officer

Date: May 5, 2023

CERTIFICATION

I, Clayton K.Y. Chun, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Alexander & Baldwin, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By /s/ Clayton K.Y. Chun

Clayton K.Y. Chun

Executive Vice President, Chief Financial Officer and Treasurer

Date: May 5, 2023

**Certification of Chief Executive Officer and
Chief Financial Officer Pursuant to
18 U.S.C. Section 1350, As Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report on Form 10-Q of Alexander & Baldwin, Inc. (the "Company") for the quarterly period ended March 31, 2023, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Christopher J. Benjamin, as Chief Executive Officer of the Company, and Clayton K.Y. Chun, as Executive Vice President, Chief Financial Officer and Treasurer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to their knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Christopher J. Benjamin

Name: Christopher J. Benjamin
Title: Chief Executive Officer
Date: May 5, 2023

/s/ Clayton K.Y. Chun

Name: Clayton K.Y. Chun
Title: Executive Vice President, Chief Financial Officer and Treasurer
Date: May 5, 2023

MINE SAFETY DISCLOSURE

The operation of Grace Pacific LLC's Makakilo Quarry (the "Quarry") is subject to regulation by the federal Mine Safety and Health Administration (MSHA) under the Federal Mine Safety and Health Act of 1977 (the "Mine Act"). MSHA inspects the Quarry on a regular basis and issues various citations and orders when it believes a violation has occurred under the Mine Act. Whenever MSHA issues a citation or order, it also generally proposes a civil penalty, or fine, related to the alleged violation. Citations or orders can be contested and appealed, and as part of that process, are often reduced in severity and amount, and are sometimes dismissed.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Company is required to present information regarding certain mining safety and health citations which MSHA has issued with respect to its mining operation in its periodic reports filed with the Securities and Exchange Commission (the "SEC"). We have provided information below in response to the rules and regulations of the SEC issued under Section 1503(a) of the Dodd-Frank Act.

The Dodd-Frank Act and the subsequent implementing regulation issued by the SEC require disclosure of the following categories of violations, orders and citations: (1) Section 104 S&S Citations, which are citations issued for violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a mine safety or health hazard; (2) Section 104(b) Orders, which are orders issued upon a follow up inspection where the inspector finds the violation previously cited has not been totally abated in the prescribed time period; (3) Section 104(d) Citations and Orders, which are issued upon violations of mandatory health or safety standards caused by an unwarrantable failure of the operator to comply with the standards; (4) Section 110(b)(2) Violations, which result from the reckless and repeated failure to eliminate a known violation; (5) Section 107(a) Orders, which are given when MSHA determines that an imminent danger exists and results in an order of immediate withdrawal from the area of the mine affected by the condition; and (6) written notices from MSHA of a pattern of violations—or the potential to have such pattern—of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of mine health or safety hazards under Section 104(e). In addition, the Dodd-Frank Act requires the disclosure of the total dollar value of proposed assessments from MSHA under the Mine Act and the total number of mining related fatalities. This information for the Quarry for the year ended March 31, 2023 is as follows:

Total Number of S&S Citations	0
Mine Act § 104(b) Orders	0
Mine Act § 104(d) Citations and Orders	0
Mine Act § 110(b)(2) Violations	0
Mine Act § 107(a) Orders	0
Total Dollar Value of Proposed MSHA Assessments	NA
Total Number of Mining Related Fatalities	0
Received Written Notice of Pattern of Violation under Mine Act §104(e) (yes/no)	No
Received Written Notice of Potential to Have Pattern under Mine Act §104(e) (yes/no)	No

As of March 31, 2023, there were no pending legal actions before the Federal Mine Safety and Health Review Commission involving the Quarry. No legal actions were instituted during the year ended March 31, 2023 and no legal actions were resolved during the year ended March 31, 2023.